REGULAR MEETING OF THE MILPITAS CITY COUNCIL

MINUTES

TUESDAY, MAY 21, 2024
CITY COUNCIL CHAMBER, 455 E. CALAVERAS BLVD, MILPITAS, CA

The City Council of the City of Milpitas convened on the City Council meeting day in a Regular Meeting of the Milpitas City Council on May 21, 2024, in the City Council Chamber, 455 E. Calaveras Blvd, Milpitas, CA, 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 6:04 PM. Roll Call was taken by City Clerk Guzzetta.

PRESENT: Mayor Montano, Vice Mayor Chua, Councilmember Barbadillo, Councilmember Lien, Councilmember Phan
ABSENT: None.

ADJOURN TO CLOSED SESSION

City Attorney Mutalipassi introduced the item to be discussed.

There were no public comments.

The City Council adjourned to Closed Session at 6:06 pm.

(a) PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Pursuant to California Government Code Section 54957
Position: City Manager

The City Council reconvened at 7:00 PM.

CLOSED SESSION ANNOUNCEMENT:

City Attorney Mutalipassi noted there was nothing to report.

PLEDGE OF ALLEGIANCE

Mayor Montano led the pledge of allegiance

INVOCATION

Vice Mayor Chua invited Pastor Rey Lingad to present the invocation.

PRESENTATIONS

Mayor Montano, joined by the City Council, presented proclamations and certificates in recognition of Asian American, Native Hawaiian, and Pacific Islander Heritage Month and Public Works Week. A video highlighting the diversity of employees and projects in the Public Works Department was shown in recognition of Public Works Week.

PUBLIC FORUM

There were the following public speakers:
1. Voltaire Montemayor

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

Vice Mayor Chua read the Code of Conduct.

APPROVAL OF AGENDA

After discussion, motion: to approve the agenda.

Motion/Second: Vice Mayor Chua/Councilmember Lien
Motion carried by the following:
AYES: Mayor Montano, Vice Mayor Chua, Councilmember Barbadillo, Councilmember Lien, Councilmember Phan
NOES: None
ABSENT:

CONSENT CALENDAR

Councilmember Phan asked to pull Item C5.

There were no public speakers.

After discussion, motion: to approve the Consent Calendar, pulling Item C5.

Motion/Second: Vice Mayor Chua/Councilmember Lien
Motion carried by the following:
AYES: Mayor Montano, Vice Mayor Chua, Councilmember Barbadillo, Councilmember Lien, Councilmember Phan
NOES: None

1. **Receive City Council Calendar of Meetings for May and June 2024 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)**

   Received City Council Calendar of Meetings for May and June 2024.

2. **Approve City Council City Council Meeting Minutes of May 7, 2024 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)**

   Approved City Council Meeting minutes of May 7, 2024.

3. **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.

4. **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.

6. **Confirm Chamber of Commerce Appointment to the Economic Development and Trade Commission (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3004)**

Received the Chamber of Commerce recommendation for the appointment of Larry Ciardella to the Economic Development and Trade Commission and confirmed the appointment.

7. **Receive Summary of 2024 Earmark Requests (Staff Contact: Matt Cano, Assistant City Manager, 408-586-3012)**

Accepted the report outlining the City of Milpitas' 2024 State and Federal Earmark Requests.

8. **Adopt a Resolution Accepting Public Improvements and Approve a Reduction of Faithful Performance Bond for Public Improvements for the RCD Housing Project Located at 355 Sango Court (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602; Michael Silveira, City Engineer, 408-586-3303; and Roberto Alonzo, Public Works Division Manager – Engineering, 408-586-3316)**

Adopted **Resolution No. 9326** granting acceptance of the completed public improvements for the RCD Housing Project as shown on Public Improvement Plans No. 2-1386; and approved a reduction in the faithful performance bond to $396,275.75, which is 25% of the security's original value for the public improvements construction cost and shall be in effect for the duration of the warranty period; and granted authorization to the City Engineer to release the remaining portion of the performance bond after the one-year warranty period without further City Council action provided all required warranty work is completed to the satisfaction of the City Engineer.

9. **Receive and Approve the Calendar Year 2023 Controlled Equipment Annual Report (Staff Contact: Jared Hernandez, Chief of Police, 408-586-2406)**

Received and approved the Calendar Year 2023 Controlled Equipment Annual Report.

10. **Adopt a Resolution Accepting ARPA Park Rehabilitation Phase 1, Project No. 3500, Authorizing the Public Works Director to File a Notice of Completion, and Authorize the City to issue a Notice of Final Acceptance after the One-Year Warranty (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)**

Adopted **Resolution No. 9327** granting acceptance of ARPA Park Rehabilitation Phase 1, Project No. 3500, authorizing the Public Works Director to file a Notice of Completion, and authorizing the Public Works Director to issue a Notice of Final Acceptance after the one-year warranty.

11. **Receive Final Update on Storm Drain System Emergency Repairs and Improvements at Evans Road and Piedmont Creek, Terminate the Emergency Declaration, and Adopt a Resolution Granting Acceptance of the Emergency Declaration - Storm Drain System Repairs and Improvements (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)**

(1) Received an update on the emergency repairs and improvements at Evans Road and Piedmont Creek; (2) Approved the termination of the emergency declaration; and (3) Adopted **Resolution No. 9328** granting acceptance of Storm Drain System Repairs and Improvements at Evans Road and

Piedmont Creek, Project No. 24-044 and 24-045, and authorizing the Public Works Director to file a Notice of Completion and issue a Notice of Final Acceptance after the one-year warranty.

12. **Approve Agreements and Related Amendments with the County of Santa Clara for the Collection of AB939 Implementation Fees and Administration of the Countywide Household Hazardous Waste (HHW) Collection Program (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602; and Elaine Marshall, Deputy Public Works Director, 408-586-2603)**

Approved and authorized the City Manager to execute two agreements and related amendments with the County of Santa Clara for (1) Collection of AB939 Implementation Fees and (2) Administration of the Countywide Household Hazardous Waste (HHW) Collection Program for the term July 1, 2024 – June 30, 2027.

13. **Approve a Professional Service Agreement with Backflow Prevention Specialists, Inc. for the Backflow Hazard Assessment Survey (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602; and Michael Silveira, City Engineer, 408-586-3303)**

Approved and authorized the City Manager to execute a Professional Service Agreement with Backflow Prevention Specialists, Inc. in the amount of $121,394.00 for the Backflow Hazard Assessment Survey.

14. **Consider Fee Waiver Requests from the Samuel Ayer High School Alumni Association, Rotary Club of Milpitas, and LEAD Filipino, and a Donation to the Sunnyhills Neighborhood Association (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)**

(1) Approved a fee waiver of $1,500.00 for the Samuel Ayer High School 24th Annual Reunion at Murphy Park on September 21, 2024; (2) Approved a fee waiver of $522.50 for the Rotary Club of Milpitas Fundraiser "A Rose for You" on May 19, 2024; (3) Approved a fee waiver of $93.00 for the LEAD Filipino Yoga event at Delano Manongs Park Filed on June 9, 2024; and (4) Approved a donation of $500.00 for the Sunnyhills Neighborhood Association Milpitas Juneteenth 2024 event at Sunnyhills Albert Augustine, Jr. Memorial Park on June 15, 2024.

15. **Approve the Community Heroes Program City Council Policy (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)**

Approved the Community Heroes City Council Policy.

ITEMS PULLED FROM CONSENT CALENDAR

5. **Authorize the Reallocation of Money Appropriated in the FY23/24 Budget from the Legacy Special Council Provider to the Current Special Council Provider and Approve and Authorize the City Attorney and City Manager to Execute an Amendment to the Contract with Meyers Nave for Contracted Outside Counsel (Staff Contact: Michael Mutalipassi, City Attorney, 408-586-3040)**

Councilmember Phan asked for additional information on the request. City Attorney Mutalipassi noted that this item recommends reallocating funds from one legal firm to another for special projects within the city's budget. The funds in question were initially designated for legal services provided by a legacy firm, BBK. However, all projects with BBK have been completed, prompting the need to transfer the remaining budgeted funds to another legal firm, Meyers-Nave, which has been providing legal services to the city on an as-needed basis.

Councilmember Phan asked for clarification on the services provided by the law firm. City Attorney Mutalipassi explained that the special projects covered by this budget allocation include various legal matters such as HR-related issues, Public Records Act projects, matters with the Public Employee Relations Board (PERB), and arbitrations involving disputes with unions. He emphasized that the funds

being reallocated are already part of the city attorney's budget, not new appropriations, and that the reallocation and amendment to the contract are necessary to cover ongoing legal work.

Councilmember Phan asked about the scope of the contract and the duration of the relationship with the special counsel. City Attorney Mutalipassi responded that the contract covers various HR and Public Records Act projects and that the city has worked with this firm, Meyers Nave, intermittently for about 30 years. The Councilmember inquired about the total amount allocated towards this firm since the last fiscal year. The City Attorney stated that approximately $150,000 was allocated for special projects last year, and an additional $90,000 is proposed, with around $20,000 allocated to other firms. Councilmember Phan suggested the request should go through the budget process and stated he could not support the item. The City Attorney explained that the funds were already included in the current budget and the reallocation involved moving funds from the legacy firm (BBK) to the new firm (Meyers Nave) due to the completion of previous projects.

Vice Mayor Chua clarified that the funds are not proposed but from an existing budget.

Councilmember Barbadillo asked for clarification on the budgeting process for special counsel services, highlighting confusion about funds allocated in previous fiscal years. City Attorney Mutalipassi noted that the budget for the new special counsel was already accounted for in the city attorney's budget. The Councilmember questioned the need for the reallocation if funds were already budgeted, prompting clarification that the amendment is to switch contracts, not allocate new funds. Further discussion ensued regarding the necessity of the reallocation and its impact on the budget. City Attorney Mutalipassi emphasized that without approval, the special counsel work cannot proceed, indicating the urgency of the decision.

There were the following public speakers:
1. Voltaire Montemayor

After discussion, motion: to (1) Authorize the reallocation of money appropriated in the FY-23/24 budget from the legacy special council provider to the current special council provider and approve; (2) Approve an amendment to the contract with Meyers Nave for contracted outside counsel in the amount of $90,000; and (3) Authorize the City Attorney and City Manager to execute the amended agreement..

Motion/Second: Vice Mayor Chua/Mayor Montano
Failed by the following:
AYES: Mayor Montano, Vice Mayor Chua
NOES: Councilmember Barbadillo, Councilmember Lien, Councilmember Phan

The motion failed.

PUBLIC HEARINGS

16. Approve the Conceptual Designs for South Milpitas Boulevard Road Extension, Project No. 2016, and Montague Pedestrian Overcrossing at Penitencia Creek, Project No. 2018; and Adopt a Resolution Adopting the Initial Study Mitigated Negative Declaration for South Milpitas Boulevard Road Extension, Project No. 2016 (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602; and Michael Silveira, City Engineer, 408-586-3303)

City Manager Thomas introduced the item. Acting Public Works Division Manager - Engineering Eam presented the report.

Mayor Montano opened the public hearing.

There were the following speakers:
1. Voltaire Montemayor

Mayor Montano closed the public hearing.

Councilmember Barbadillo asked questions about the project funding and the consequences if the anticipated grant isn't received. Acting Public Works Division Manager - Engineering Eam, City Engineer Silveira, Assistant City Manager Cano and City Manager Thomas responded to his questions. The Councilmember agreed with the project, emphasizing its importance to the regional plan and the need to pursue federal infrastructure grants to reduce local costs.

Mayor Montano commented on the time required to complete similar projects.

After discussion, motion: to approve the conceptual designs for the South Milpitas Boulevard Road Extension, Project No. 2016, and the Montague Pedestrian Overcrossing at Penitencia Creek, Project No. 2018; adopt **Resolution No. 9329** to adopt the Initial Study/Mitigated Negative Declaration for the South Milpitas Boulevard Road Extension, Project No. 2016; authorize the Public Works Director to file a Notice of Determination for South Milpitas Boulevard Road Extension, Project No. 2016, in accordance with CEQA Guidelines Section 15075; find that the Montague Pedestrian Overcrossing at Penitencia Project meets all the requirements for a Statutory Exemption under Public Resources Code section 21080.25 and is therefore, is statutorily exempt from environmental review under CEQA; and authorize the Public Works Director to file a Notice of Exemption for Montague Pedestrian Overcrossing, Project No. 2018 in accordance with CEQA guidelines section 15062..

Motion/Second: Councilmember Lien/Councilmember Barbadillo
Motion carried by the following:
AYES: Mayor Montano, Vice Mayor Chua, Councilmember Barbadillo, Councilmember Lien, Councilmember Phan
NOES: None

17. Adopt a Resolution Approving the Fiscal Year 2024-25 User and Regulatory Fee Schedule (Staff Contact: Luz Cofresí-Howe, Finance Director, 408-586-3111)

City Manager Thomas introduced the item. Assistant Finance Director Tsang offered introductory remarks, and ClearSource Consultant Terry Madsen presented the report.

Mayor Montano opened the public hearing.

There were the following public speakers:
1. Voltaire Montemayor

Mayor Montano closed the public hearing.

Vice Mayor Chua questioned the percentage increase for fees and asked how the City compares to other cities in terms of fees. Assistant Finance Director Tsang noted that the City anticipates approximately $700,000.00 per year in new revenue from the fee increases. ClearSource Consultant Terry Madsen noted that when the city completed a cost of service study, it was confirmed that the City fees were in alignment with the region. He noted that this update is an interim year update and only an inflationary adjustment.

Councilmember Barbadillo raised concerns about the fiscal impact of adjusting service fees, particularly

how it affects different departments and the community. He questioned if these adjustments, which include minor increases for building permits, recreation, police, and fire services, would impact residents unduly, particularly with recent budget discussions. He followed up, questioning the timing of this information, suggesting it should have been part of the budget discussion, especially when addressing employee compensation. Assistant City Manager Matt Cano, joined by Recreation and Community Services Director Lorentzen, explained that cost recovery models are standard to ensure public funds aren't subsidizing private benefits, and the city aims to minimize public impact through scholarships and other programs. Any fee increases are necessary to avoid cutting other city services.

Vice Mayor Chua questioned why increases are being proposed to the fee schedule. ClearSource Consultant Terry Madsen clarified that most fees remain unchanged and that new categories are being added to capture non-resident fees. He noted that the majority of the fees proposed for increase are development related.

Councilmember Lien made a motion: to adopt a resolution approving the Fiscal Year 2024-25 User and Regulatory Fee Schedule. Vice Mayor Chua seconded the motion. Vice Mayor Chua asked Councilmember Barbadillo if there were specific concerns he wanted addressed.

Councilmember Barbadillo suggested the item needed more discussion before the City Council could take action.

ClearSource Consultant Terry Madsen proposed adjusting the fees by 3.6% to bring them in line with the local CPI.

Councilmember Barbadillo questioned the impact if the User and Regulatory Fee Schedule wasn't approved at this meeting. Assistant Finance Director Tsang noted that some fees require an extended period before they can be enacted so they couldn't be captured at the start of the new budget period.

Vice Mayor Chua asked when the item could next be heard. City Clerk Guzzetta clarified the noticing period. It was concluded the next possible meeting would be the regular City Council meeting of June 18, 2024.

Upon a call for the question, the motion failed.

Motion/Second: Councilmember Lien/Vice Mayor Chua
Failed by the following:
AYES: Councilmember Lien
NOES: Mayor Montano, Vice Mayor Chua, Councilmember Barbadillo, Councilmember Phan

The City Council directed staff to return with this item on June 18, 2024.

COMMUNITY SERVICES AND SUSTAINABLE INFRASTRUCTURE

18. Presentation from Bay Area Air Quality Management District Staff on the Results of the South Bay Odor Attribution Study (Staff Contact: Christian Di Renzo, 408-586-2602, Public Works Director; and Elaine Marshall, Deputy Public Works Director, 408-586-2603)

Deputy Public Works Director Marshall introduced the item. Bay Area Air Quality Management District Deputy Executive Officer of Public Affairs Viet Tran and California Air Resources Board Air Resources Engineer Joe Zhou presented the report. Newby Landfill General Manager Enrique Perez responded to questions.

There were the following public speakers:
1. Raymond Wong
2. Keng Ng
3. Chia Ling Kong
4. Vikram Sulakhe
5. Member of the Public
6. Voltaire Montemayor

Council discussion ensued.

Councilmember Phan left the meeting at 10:00 PM.

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS

Vice Mayor Chua made the following announcements and requests:
1. She spoke about recent news regarding Chaparral Ranch, which provides horseback riding for the City of Milpitas, and requested to send a letter signed by the Mayor and City Council to the County Administrator and Supervisor Lee, asking the county to investigate the treatment of horses by Chaparral Corporation at Ed Levine Park and the adjacent Chaparral Ranch. Mayor Montano noted that a letter was currently in the works from the City Manager and City Attorney to the County. There was consensus to add the item to the prioritization list (Absent: Phan)
2. Add an item for staff to bring back an amendment to the municipal code regarding the boarding and treatment of horses within the city's jurisdiction. There was consensus to add the item to the prioritization list (Absent: Phan)
3. Vice Mayor Chua Invited the community to the Technology for Seniors Program.

Mayor Montano spoke on flags displayed on private property.

City Manager Thomas announced a Community Open House at the Barbara Lee Senior Center to discuss a zoning change on Thursday, May 30, 2024.

Councilmember Lien thanked staff and the community for their support of the Milpitas Rotary Club fundraiser for scholarships for students in the community and Vietnam.

ADJOURNMENT

Mayor Montano adjourned the meeting at 10:19 PM.

The foregoing minutes were approved by the Milpitas City Council on June 18, 2024.

Suzanne Guzzetta
Milpitas City Clerk