

*Draft* **MEETING MINUTES**  
**CITY OF MILPITAS**

**Minutes of:** **Joint Meeting of the Milpitas City Council and Milpitas Public Financing Authority**  
**Date:** **Tuesday, August 20, 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** Vice Mayor Dominguez called the joint meeting to order at 6:00 PM. City Clerk Mary Lavelle called the roll.

**PRESENT:** Vice Mayor Dominguez, Councilmembers Montano, Nuñez and Phan

**ABSENT:** Mayor Tran

**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 7:22 PM.

**ANNOUNCEMENT** City Attorney Chris Diaz stated out of Closed Session there was no reportable action.

**PLEDGE** Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

**INVOCATION** Councilmember Phan offered his assignment to Councilmember Nuñez, who commented briefly.

**PUBLIC FORUM** Rob Means, 1421 Yellowstone resident, mentioned a recent scathing Santa Clara County Civil Grand Jury Report issued regarding the services of the Santa Clara Valley Transportation Authority. He quoted from the report.

Councilmember Nuñez asked if City administration would address the issue raised by Mr. Means. Interim City Manager McHarris reported that staff was working on a letter of response to the grand jury report.

Inderjit Mudra, resident, commented on industrial land use and use of chemicals. Vice Mayor Dominguez asked him to wait until the agenda item (ordinance, item no. 13) to speak.

Frank DeSmidt, from Chamber of Commerce and Milpitas Rotary Club, announced several upcoming events in Milpitas.

**ANNOUNCEMENTS** Interim City Manager McHarris stated that two items were advertised for Public Hearings on this date. However, those would not be heard and would be rescheduled for later Council meetings. Regulating Short Term Rentals was to be rescheduled on September 17 while a hearing related to 2019 Adjustment of Transit Area Specific Plan fees would move to a later date.

Councilmember Nuñez commented that the previous Tuesday (August 13), Councilmember Montano had distributed certificates to women, and on Saturday he attended a women's event at San Jose State University. One speaker was Vice Mayor Dominguez, along with many women he highly admired. He displayed a t-shirt he'd received. Vice Mayor Dominguez followed his remarks, inviting all to a women's march in San Jose on August 26.

**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 Phan

Motion carried by a vote of: AYES: 4  
NOES: 0  
ABSENT: 1 (Tran)

**CONSENT CALENDAR**

Motion: to approve the consent calendar including agenda items no. 2, 6 – 10, and 14

Councilmember Nuñez requested to remove items no. C1 and C5 from consent.

Councilmember Phan requested to add no. 14 (assistance programs) to consent.

Councilmember Montano requested to remove items no. C3, C4, and C11.

Motion/Second: Councilmember Nuñez/Councilmember Montano

Motion carried by a vote of: AYES: 4  
NOES: 0  
ABSENT: 1 (Tran)

Though removed from consent upon this vote, later in the evening, items no. 1, 3, 4, and 5 were approved upon being returned to consent in one additional unanimous vote.

- C1. Council Calendars Accepted City Council calendar for August and September 2019.
- C2. Adopt Ordinance No. 38.834 Waived the second reading and adopted Ordinance No. 38.834 amending Milpitas Municipal Code, related to zoning to establish an administrative hearing process.
- C3. Adopt Ordinance No. 172.6 Waived the second reading and adopted Ordinance No. 172.6 amending Milpitas Municipal Code, Title III, Chapter 6 relating to massage establishments and practitioners.
- C4. Adopt Ordinance No. 301 Waived the second reading and adopted Ordinance No. 301 amending various sections of Titles I, II, IV, V, VI, XI and XII of the Milpitas Municipal Code to make corrections, clarifications, minor updates and modifications.
- C5. Adopt 2 Resolutions Adopted Resolution No. 8996 of the Milpitas City Council and Resolution No. PFS 25 of the Milpitas Public Financing Authority Board authorizing investment of monies in the Local Agency Investment Fund and updating officers' information.
- C6. Adopt Resolution Adopted Resolution No. 8997 approving the Investment Policy for FY 2019-20.
- C7. Adopt Resolution Adopted Resolution No. 8998 granting acceptance of public improvements for the McCarthy Creekside Phase 1 – Buildings A, B and F Subdivision at 625 N. McCarthy Blvd, Tract 10393, Public Improvement Plan No. 2-1213 & 2-1222; approving a reduction in the faithful performance bond to \$60,300, subject to and in effect for the duration of a 1-year warranty period; and granting authorization to the City Engineer to release the performance bond after the one-year warranty period, without further Council action provided all required warranty work is completed to the satisfaction of the City Engineer.

- C8. Approve Agreement Approved and authorized the Interim City Manager to execute a Stormwater Management Facilities Operation and Maintenance Agreement for Milpitas – District 1 Owner, LLC for the District 1 Lot 1 mixed use project at 1315 McCandless Drive.
- C9. Approve Agreement Approved and authorized the Interim City Manager to execute a Stormwater Management Facilities Operation and Maintenance Agreement for The New Home Company Northern California LLC and Ellison Park Community Association for the Ellison Park residential project at 231, 247, 271 Houret Drive and 1757 Houret Court.
- C10. COPS grant Accepted the additional FY 2018 Citizen Options for Public Safety (COPS) grant funding in the amount of \$56,242.63 and approved a budget amendment.
- 11. Approve Travel** Councilmember Montano had removed this item – seeking approval for officials’ travel to Nashville, TN - from consent. She felt that the City’s Economic Development Director should also attend the conference. The City Manager responded that Mr. Alex Andrade was included in this conference, but his travel did not require a vote of the City Council, as did his own and Councilmembers.

Motion: to authorize and approve travel for Vice Mayor Dominguez, Councilmember Phan, and Interim City Manager McHarris to attend the 2019 Study Mission in Nashville, TN from September 3 - 6, 2019 hosted by the Silicon Valley Organization, for a combined total expense amount not to exceed budgeted Conferences/Meeting allocation of \$9,000

Motion/Second: Councilmember Montano/Councilmember Nuñez

Motion carried by a vote of: AYES: 4  
NOES: 0  
ABSENT: 1 (Tran)

Due to the late hour, Councilmembers agreed to vote on remaining items that had earlier been pulled from consent. Councilmembers Montano and Nuñez rescinded their prior request for removal and asked to vote on the items.

Motion: to approve agenda items no. 1, 3, 4, and 5 listed on consent

Motion/Second: Councilmember Montano/Councilmember Nuñez

Motion carried by a vote of: AYES: 4  
NOES: 0  
ABSENT: 1 (Tran)

Interim City Manager McHarris recommended that the City Council hold off on agenda items no. 15 (facility use manual) and no. 16 (direct policy on training & events) until all members were present. He thus requested to carry those over to the Council meeting on September 17.

Councilmember Montano said that maybe the group could discuss those topics at the scheduled retreat (August 30 special meeting).

Councilmember Nuñez had prepared several agenda item request forms and asked if those had been sent to or received by the City Manager. He had five topics to request: community museum and park per Historical Society; Social Media; renaming of Dixon Landing Road to Barack Obama Blvd; feasibility study of community theater; and, commendation and proclamation process. He handed his forms to Vice Mayor Dominguez for the Rules Subcommittee to receive and review, submitted by himself and Councilmember Phan.

**PUBLIC HEARINGS**

- 12.** Development at 2001 Tarob Court Planning Director Ned Thomas introduced Planner Lillian Hua who gave a presentation detailing the 40-unit condominium residential development project at 2001 Tarob Court in the Transit

Area Specific Plan area. The project was submitted by The True Life companies and was the latest of its projects near the new Milpitas BART station.

Vice Mayor Dominguez opened the public hearing. She requested the developer's representative to address the City Council first.

Ms. Leah Benison from The True Life Companies presented the developer's proposal for its third development out of four in the Transit Area on Tarob Court. She described the rationale for the request to pay an in lieu fee toward affordable housing, rather than build the required number of affordable units (6) in the project.

Councilmember Montano confirmed some of the environmental features. She inquired about the art required and that the developer would pay a fee into the City's public art fund (\$69,469 was the estimated amount).

Councilmember Nuñez commented that developer did not plan to build the project and asked if that was a plus or minus. The Planning Director responded this was same practice followed by True Life in its previous projects, which sold its last two to Toll Brothers company to build. Mr. Thomas expressed that staff disagreed with the developer's request on the fee versus building affordable units, as required in the Council adopted affordable housing ordinance. He went on to define three possible exceptions to the requirement for affordable housing, and those findings could not be met.

Councilmember Nuñez asked about timing of the projects, and following the new affordable housing ordinance application to existing development projects.

Councilmember Phan reviewed the timeline of project actions with Ms. Benison. He asked her many questions about timing, funding, maps, and steps toward anticipated actions this evening. He commented on the public art fee to be paid by developer and the control on the art piece by the residents of the city.

Councilmember Nuñez asked staff to review the slide listing possible exceptions rather than building affordable housing units in the project. He asked the City Attorney questions on the number of units, and if that was adjustable.

The public hearing continued with the following speakers.

John Agg, resident and Chair of the Arts Commission, applauded the developer and appreciated comments by Councilmember Phan about public art. He felt the funds contributed to the public art fund could be used at the nearby planned park or within the city.

Rob Means, 1421 Yellowstone, spoke of global warming. He said all developers' goal was to increase their profits. He did not favor giving an exception to the developer on the affordable housing requirement.

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

Motion/Second: Councilmember Nuñez/Councilmember Phan

Motion carried by a vote of: AYES: 4  
NOES: 0  
ABSENT: 1 (Tran)

Councilmember Phan noted that time affected construction costs for any development. He favored the project as proposed at this meeting and would support it.

Councilmember Nuñez agreed with most of what Mr. Phan said, and wanted a strong relationship with developers that come to Milpitas. He referred to nearby cities in the news this date on lack of housing getting built. He favored some compromise with the developer on the

number of units for affordable housing and allowing for payment of the in lieu fee toward affordable housing.

Councilmember Montano said the bottom line was to build affordable housing in Milpitas.

Councilmember Phan asked if the developer would add more affordable housing units into future projects.

Vice Mayor Dominguez stressed the need to build in Milpitas to gain affordable housing and to work in relationship with developers. She would approve the project.

The City Attorney said he heard a consensus regarding the exception requested by the developer to allow payment of an lieu fee, instead of building six affordable units. This would be in favor of a Resolution with the exception included. Findings would need to be made.

(2) Motion: to approve the residential development project at 2001 Tarob Court by The True Life Companies, as presented, and to consider the Addendum to the Transit Area Specific Plan Environmental Impact Report (TASP EIR). As a separate and independent basis, consider the exemption from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15182 (Project Consistent with a Specific Plan), 15183 (Project Consistent with the General Plan), and 15168 (Projects Consistent with a Program EIR).

Motion included adoption of Resolution No. 8899, which would be an alternate version of the project approval resolution (not the one presented in the Council agenda packet), including findings for allowing an exception to the requirements of the affordable housing ordinance. City Attorney stated the resolution with the findings would need to come back to the City Council as an information item on consent at a future meeting, most likely on September 17 when all members would be present.

Resolution was approving Site Development Permit (SD18-0014), Conditional Use Permit (UP19-00090, Vesting Tentative Map (MT18-0004), and Environmental Assessment (EA19-0002) to allow development of a 40-unit residential condominium building, up to 49 feet in height (four stories), with parking for up to 74 vehicles, on a 1.22-acre site located at 2001 Tarob Court, and allowing the applicant's request for an exception to the Affordable Housing Ordinance.

Motion/Second: Councilmember Phan/Councilmember Nuñez

Motion carried by a vote of: AYES: 4  
NOES: 0  
ABSENT: 1 (Tran)

At 9:10 PM, City Council moved on to Item No. 13 to allow staff to gather the alternate Resolution and come back for voting later on the action items for No. 12. Council then voted as noted above.

**13.** Ordinance No. 38.836 related to Zoning for Nonindustrial Land Uses, and others

Planning Director Ned Thomas introduced the request for introduction of an ordinance to amend the City's zoning code related to three land use topics. Several City staff would discuss the uses: Economic Development Director Alex Andrade, Deputy Fire Chief/Fire Marshal Albert Zamora and Senior Planner Rozalynne Thompson.

Mr. Andrade defined and described the amendment for zoning related to public safety uses, with the desire to protect industrial land for companies and maintaining jobs, while permitting the site locations needed for public safety facilities, such as fire and police stations.

Mr. Zamora spoke of concern about non-industrial assembly uses in heavy industrial zones, and he explained sensitive receptors and the need to clearly identify those when unique uses were requested by applicants.

Ms. Thompson provided background on Assembly Uses, and a previous text amendment to the Municipal Code.

Next, Vice Mayor Dominguez opened the public hearing.

Inderjit Mundra, resident, said there was no mention of how dangerous the chemicals in an industrial area could be. Even though Conditional Use Permits were issued for assembly uses in the past, he was not sure how they could have done so. It was a huge burden if anything negative happened.

Bob Livengood, speaking on behalf of Milpitas Charity Bingo, said his facility would become a legal non-conforming use with bingo games in industrial area. He and other businesses like his would propose to City Council to allow current Use Permittees the potential to expand up to 20% of their footprint within the next couple years, despite being non-conforming.

Casey McNeil, resident and worker in the City, was employed by Flex which had been around here for 50 years (formerly Flextronics). Manufacturing was what took place at Flex sites in Milpitas. He emphasized the building for specialized manufacturing of products right here in the City, with 2000 jobs in Milpitas. He and his company would like to see continued manufacturing uses in the area.

Councilmember Nuñez was fine with changes presented. He asked if the staff recommended to include what Mr. Livengood asked to added. Staff said no, based on the Planning Commission recommendation.

Councilmember Montano agreed with staff on not permitting further expansion of legal non-conforming uses in an industrial area. Take a hard stand for the greater good of the community and maintain the City's industrial base, with no concessions.

Fire Marshal Zamora addressed On Demand Mobile Fueling Operations, identifying several companies in business which staff seeks to regulate within the city. He detailed mobile fueling devices versus fixed location gas stations. Nearby shopping malls had requests for mobile fueling permits that were not approved, and the Great Mall had had a temporary permit after a brief trial of 60 days. He responded to various questions from the City Council.

Senior Planner Thompson next discussed the zoning amendment needed for mobile fueling services. She described which zones (industrial) this was proposed for operation through issuance of a CUP. She responded to various questions from the City Council.

Next, the Vice Mayor sought public comment on the fueling part of the code amendment.

Inderjit Mundra, was on the Chamber of Commerce Board, and saw text in the ordinance about insurance requirements, limiting the number of company vehicles, subject to yearly review. He felt limiting the number of vehicles hurt the business in the growing economy.

Two Booster Fuel executives made a presentation on their company and the vehicles that Booster used. No underground storage tanks which was more environmental, with no spillage.

Michael Kasparzak, from Mountain View spoke on behalf of Fill, another mobile fueling company. It had suspended residential delivery in the Bay Area, but it did provide that across the country. He was disappointed in the ordinance by moving this service to potentially be located only in the industrial area. He mentioned Walmart as a potential location.

Economic Development Director Andrade spoke next on the Public Safety Facility Uses in industrial areas. This change in the zoning part of the municipal code was to allow use at 1126 Yosemite Drive for a temporary Fire Station No. 2.

Vice Mayor Dominguez asked for any more speakers.

Voltaire Montemayor, resident, said okay on fueling service, as long as it was safe and not impacting others, for him, it should be ok.

(1) Motion: to close the public hearing, following 6 speakers

Motion/Second: Councilmember Nuñez/Councilmember Phan

Motion carried by a vote of: AYES: 4  
NOES: 0  
ABSENT: 1 (Tran)

City Attorney Diaz said he heard consensus on the first element of nonindustrial uses.

Councilmember Phan wanted to consider a request to pipeline the legal non-conforming uses. Mr. Diaz replied it was not included in the ordinance text as presented, while staff could bring it back at another meeting.

Vice Mayor Dominguez suggested a poll on the first section. The City Attorney orally asked for those in favor and found just two possibly to vote for the exception requested. One member wanted to defer.

Next, regarding the mobile fueling businesses zoning section, the attorney inquired how many were accepting of the changes. There were a variety of viewpoints expressed, while the majority did not want to vote to adopt the assembly use changes at this meeting. Staff responded that it could return at a later date with an ordinance for those zoning changes. Mixed reactions were given on the mobile fueling, but no majority support.

Motion: to reject the staff recommendation on mobile fueling regulations in an ordinance

Motion/Second: Councilmember Nuñez/Councilmember Phan

Motion carried by a vote of: AYES: 3  
NOES: 1 (Montano)  
ABSENT: 1 (Tran)

The last segment of the ordinance dealt with temporary uses for public safety. There was consensus to support that zoning amendment, so the vote proceeded.

Acknowledging that the title of the ordinance would need to be modified to remove reference to the sections that would be deleted from the draft ordinance, City Attorney Diaz read aloud the title of Ordinance No. 38.836 as presented, “An Ordinance of the City Council of the City of Milpitas Amending Sections of Chapter 10 of Title V of the Milpitas Municipal Code Relating to Assembly Uses, Mobile Fueling Uses, and Temporary Public Facilities and Making Findings of CWQA Exemption.”

(2) Motion: to waive the first reading beyond title and to introduce Ordinance No. 38.836 amending Milpitas Municipal Code Subsection 13.11 (“Temporary Uses and Structures”) - not including any zoning changes for regulation of mobile fueling facilities nor amending zoning in industrial areas of the city

Motion/Second: Councilmember Nuñez/Councilmember Montano

Motion carried by a vote of: AYES: 4  
NOES: 0  
ABSENT: 1 (Tran)

**COMMUNITY  
DEVELOPMENT**

C14. Resolutions for two Assistance Programs      This item was added to consent. Adopted Resolution No. 8900 approving establishment of the Milpitas Assistance Program and Resolution No. 8901 approving establishment of the Milpitas Residential Building Incentive Program.

**LEADERSHIP**

15. Facility Use Manual      This item was not heard.

16. Direction on Policy for Training and Events      This item was not heard.

**NEXT AGENDA**

17. Preview next agenda      Noted receipt of list of agenda items for September 3, 2019 City Council meeting agenda.

**ADJOURNMENT**      Vice Mayor Dominguez adjourned the joint meeting at 11:35 PM.

*Meeting minutes respectfully drafted and submitted by  
Mary Lavelle, City Clerk*