

Draft **MEETING MINUTES**
CITY OF MILPITAS

Minutes of: **Special and Regular Meetings of the
Milpitas City Council**
Date: **Tuesday, June 18, 2019**
Time: **5:30 PM Closed Session
7:00 PM Open Session**
Location: **Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas**

CALL TO ORDER

Mayor Tran called the joint meeting to order at 5:31 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. He arrived in Closed Session.

CLOSED SESSION

City Council convened in Closed Session to discuss six agenda items, five as listed on the Regular Meeting agenda (a) – (e) and one listed on a Special Meeting agenda.

At 6:30 PM, City Council paused from Closed Session to go outdoors to join the City-sponsored “Juneteenth” celebration at Cesar Chavez Plaza. The Council reconvened in Closed Session.

City Council came out from Closed Session to the dais for the Open Session regular agenda at 7:46 PM.

ANNOUNCEMENT

City Attorney Chris Diaz stated out of Closed Session the following Council actions:

- (1) City Council agreed by unanimous vote to approve a side letter with the Milpitas Police Officers Association regarding retiree dependents’ health care benefits. That document would be available with the City Clerk or Human Resources Director.
- (2) City Council agreed to changes, regarding the open session agenda item no. C14, on an amendment to the agreement with the law firm BB&K. A new version of the modified amendment was handed to the City Clerk and would be the version for Council action.
- (3) Regarding Agenda Item No. 19, for the appointment of Steve McHarris as interim City Manager, there was one modification to the Resolution to remove item 3.

PLEDGE

Resident Voltaire Montemayor led the pledge of allegiance.

INVOCATION

Councilmember Nuñez led a prayer from the dais to start the meeting.

PRESENTATIONS

Mayor Tran presented:

- (1) Certificates to students for efforts on “All Hearts One Bullet” High School event to speak out and combat gun violence on school campuses, which was accepted by Nisha Porchezhiyan and Sean Nguyen.
- (2) Proclamation of *Philippines Independence Day* for June 12, 2019 was presented by Vice Mayor Dominguez to women representatives of Bayanihan Fil-Am Foundation.

PUBLIC FORUM

Frank DeSmidt, Milpitas Rotary Club and Chamber of Commerce representative, announced that on Thursday, July 25 there would be the Chamber’s annual awards banquet at Embassy Suites Hotel. On September 27, at the same hotel, would be the Chamber’s Casino Night fundraiser.

George Lund, resident and property owner, would like something done about corruption at Milpitas Code Enforcement. He claimed felonies were done by that office. He’d been harassed

regarding feral cats at his home, where he fed the animals. He received a citation from the Fire Marshal about weeds on his property while city property had nine foot weeds on it.

Tom Valore, resident, posed two questions the previous week at the City Council meeting, but he did not hear back from any Councilmember nor staff on those. He spoke of the need for attention to gun violence. He thanked Council for attention and time at this meeting.

Rob Means, 1421 Yellowstone, went to a presentation the prior Saturday, regarding “draw down” of CO2 in the atmosphere. He quoted information from scientists and others.

Voltaire Montemayor, resident, saluted the Filipino people, who were everywhere in the Bay Area. He spoke of the variety and dedication of people of the Philippines and his own family.

ANNOUNCEMENTS

Interim City Manager Steve McHarris announced the City’s annual celebration of the 4th of July in Milpitas, with fireworks display in the evening from the sports field. City offices would be closed on 4th of July, while the Police and Fire Departments were not affected by the closure.

The next City Council meeting would be on Tuesday, August 13, if the consent calendar agenda item no. C2 was approved, and the regular meeting of Tuesday, August 6 would be canceled (due to National Night Out).

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTION

City Attorney Diaz asked Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. By roll call, no conflicts were reported.

Regarding agenda item no. C9 (assumption of agreements), Councilmember Montano reported receipt of a campaign contribution from the McCarthy family. Similarly, Mayor Tran reported campaign contributions of \$100 or more from McCarthys or those affiliated with McCarthy Ranch. City Attorney Diaz remarked that the information reported did not preclude Council members from voting.

APPROVAL OF AGENDA

Motion: to approve the meeting agenda, as submitted

Motion/Second: Councilmember Nuñez/Councilmember Montano

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, 10, 12–14, and 19

City Clerk Mary Lavelle made the announcement of the election result for agenda item C5, in which the one property owner/voter voted yes, agreeing to annexation into CFD 2005-1.

Interim City Manager McHarris requested that the Council remove item no. C8 (economic development strategy) from consent for a staff report.

City Attorney Diaz commented that item no. C4 (budget adoption) would be modified to remove the City Manager from the Resolution regarding unrepresented employees. Also, the attorney had provided a modified Resolution to the City Clerk for item no. C14 (amendment to BB&K Agreement).

Mayor Tran wished to place item no. 19 (Resolution on interim City Manager) onto consent. Mr. Diaz responded that would be acceptable, as long as he disclosed aloud the compensation to the City Manager was at the annual salary of \$298,000.04. A budget appropriation was not needed (though it had been requested in the staff report).

Councilmember Nuñez stated he wanted to amend item no. C2 to do so for every year, to move the Council meetings to the second Tuesday in August and not to have Council meetings on the first Tuesday in August due to National Night Out activities.

Councilmember Montano wished to remove item no. C11 (wet well in stormwater system) from consent.

Motion/Second: Councilmember Nuñez/Councilmember Montano

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

- C1. Council calendars Accepted City Council calendars for June and July 2019.
- C2. August meetings Canceled the regularly scheduled City Council meeting on August 6, 2019 and called for a Special City Council meeting on August 13, 2019, due to the observance in Milpitas of National Night Out on August 6 and on the first Tuesday each August annually. Councilmember Nuñez clarified at the consent calendar vote that he desired this action to be for all future years.
- C3. Meeting Minutes Approved City Council meeting minutes of June 4, 2019.
- C4. 3 Resolutions related to employee agreements
1. Adopted Resolution No. 8886 approving a new Memorandum of Understanding between the City of Milpitas and United Public Employees of California (UPEC) Mid-Management and Confidential Unit (MidCon) covering the period of July 1, 2019 through June 30, 2023.
 2. Adopted Resolution No. 8887 approving a new Memorandum of Understanding between the City of Milpitas and the Professional and Technical Group (ProTech) of employees covering the period of July 1, 2019 through June 30, 2023.
 3. Adopted Resolution No. 8888 updating the Unrepresented Miscellaneous, Police and Fire Management Salary and Benefit Matrix covering the period of July 1, 2019 through June 30, 2023.
- C5. Resolution – Annex Property into CFD 2005-1
1. Adopted Resolution No. 8889 certifying election results and adding Tract No. 10470 to Community Facilities District 2005-1 (Annexation No. 20); and
 2. Approved Final Tract Map No. 10470, accept all offers of dedications as stated and depicted on the final map upon completion and acceptance of improvements; and
 3. Approved and authorized the Interim City Manager to execute the Subdivision Improvement Agreement between the City of Milpitas and Eighty-Eight Homes LLC.
- C6. Resolution – Skate Park Adopted Resolution No. 8890 approving project plans and specifications and awarded a construction contract for the Base Bid plus Add Alternates 1 and 4, authorized the Interim City Manager to execute the contract with Suarez and Munoz Construction, Inc. in the amount of \$4,579,156 for the Milpitas Skate Park and Concession/Storage/Restroom Buildings, Projects No. 5111, No. 3424 and No. 6133, and authorized the Engineering Director/City Engineer to negotiate and execute contract change orders in an aggregate amount not to exceed \$690,000; approved budget appropriation in the amount of \$800,000 from the General Fund Unassigned Reserves.
- C7. Resolution – Xerox Adopted Resolution No. 8891 authorizing the City Manager to execute a lease with Xerox Corporation for copier/multifunction digital devices and full service maintenance through a Cooperative Procurement Contract by Region 4 Educational Services Center for a 60-month (5 year) maximum contract amount of \$292,867.
8. RFP for Economic Development
- Economic Development Director Alex Andrade provided an overview of the Request for Proposals for an economic development strategy for the City of Milpitas.
- Councilmember Montano asked how staff would prevent displacement of small businesses, and Mr. Andrade replied that would be part of the results of the final reports. Consultant Ms. Sujata Srivastava from Strategic Economics also responded to her question.
- Vice Mayor Dominguez was concerned about displacement of those businesses and wanted to be challenged with policy or strategies that had not been done in Milpitas.
- Councilmember Nuñez wanted to know how the Community Development Roundtable operated,

with respect to this plan and Mr. Andrade commented. He asked additional questions on employment density near transit.

The consultant came forward stating she'd worked previously with the cities of Cupertino, Redwood City, Alameda and other Bay Area locales.

Councilmember Montano asked the difference between the economic development strategy of five years ago, and what would be done today. It seemed to her the last effort on this was only shelved. She asked staff to provide the past strategy to the consultant.

Vice Mayor Dominguez would support this request for the study while strategies and priorities were being worked on at the Economic Development Commission and by staff. The 2005 strategy was outdated so a new one was needed.

Councilmember Phan would like a Trader Joe's store in Milpitas and was excited moving forward with this strategy. He asked if the study would relate to revenue growth of the City. Mr. Phan suggested to inventory public properties or consider land banking. He liked the Smart City element and understanding infrastructure needs.

Mayor Tran was concerned that sales tax was down this past month. This strategy could help to jump start that source of revenue. Maybe urge a change and an update to retail sector. He then welcomed comments from the audience.

Tom Valore, resident, agreed there was a need for an economic development strategy, especially after being on the Board of Directors at Milpitas Chamber of Commerce. He wanted to understand why this strategy was being outsourced and not done internally by City staff.

Voltaire Montemayor, resident, noted the rating was so high, while the need and usefulness was there. Work with good quality, with concern for expense, he said.

Motion: to approve and authorize the Interim City Manager to execute a Professional Services Agreement with consultant Strategic Economics for development of an Economic Development Strategy in the amount of \$129,985

Motion/Second: Councilmember Montano/Vice Mayor Dominguez

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

C9. Assume First Amendment to McCarthy Ranch Development Agreements	Approved form Partial Assignment and Assumption Agreements to Embarcadero Capital Partners and Bridge Development Partners and authorized the Interim City Manager to execute the assignments, subject to minor conforming and clarifying changes approved by City Attorney.
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C10. Digital Billboard	Directed the Interim City Manager to proceed with a City Digital Billboard Guidance Study through a Professional Services Agreement.
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11. Agreement with Peninsula Pump & Equipment for Wet Well Rehabilitation	Councilmember Montano wished to comment on wet wells in the stormwater system. For these pumps, there must be a lack of debris in stormdrains, so residents needed to concentrate with the city on cleaning up streets. Public Works Director Tony Ndah explained the need for work on the wet well, and responded to her comments.
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Motion: to approve a five-year Agreement with Peninsula Pump & Equipment Inc. from the date of execution through June 30, 2024, for a total maximum compensation of \$457,800, to provide Wet Well Rehabilitation and Annual Maintenance Services, subject to annual appropriation of funds

Motion/Second: Councilmember Montano/Councilmember Phan

Motion carried by vote of: AYES: 5

- C12. Purchase Mobile Stage Awarded the bid to Stageline Mobile Stage, Inc. in the amount of \$190,543 for the purchase of a Stageline SL100 Mobile Stage and authorized the City Manager to execute an Equipment Purchase Agreement.
- C13. Stormwater Agreement Approved and authorized the Interim City Manager to execute a Stormwater Management Facilities Operation and Maintenance Agreement with Waterstone Community Association for the Waterstone residential project at 1494-1600 California Circle.
- C14. BB&K Amendment 1. Approved Amendment No. 1 to the agreement (updated version, as noted by City Attorney) with Best, Best & Krieger, LLP increasing the Agreement's not to exceed amount to \$2,862,250 and extending the term to June 30, 2021.
2. Approved a budget amendment to appropriate an additional \$337,000 to the City Attorney's operating budget in Fiscal Year 2018-19.

PUBLIC HEARING

15. Adopt Ordinance No. 38.834 Planning Director Ned Thomas gave overview remarks and then introduced Senior Planner Rozalynne Thompson who provided an oral report on the Administrative Hearing process for zoning matters, included in the proposed ordinance. A Zoning Administrator was recommended in the ordinance, which was heard by and recommended by the Milpitas Planning Commission with three specific comments she detailed.

Adoption of the ordinance would discontinue the current Planning Commission Subcommittee to streamline processes and conduct public hearings on a regular basis for flexibility and frequency of project approvals. She reviewed the roles of the Commission and the City Council and extent of authority on permits and other actions.

Councilmember Phan asked some questions about a chart displayed. Site Development Permits could be approved by the Zoning Administrator, with appeal possible to the full Planning Commission (unlike what was noted on the slide), he confirmed.

Mr. Thomas read aloud some of the language in the ordinance that was revised from the copy of Ordinance that was in the agenda packet, as Mr. Diaz suggested he do. Councilmember Phan wanted that language removed (2nd item) not the "contentious" wording.

Next, Mayor Tran opened the public hearing. Resident Voltaire Montemayor commented.

(1) Motion: to close the public hearing, following one speaker

Motion/Second: Councilmember Montano/Councilmember Nuñez

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

Councilmember Phan asked if the slide was a staff or Commission recommendation. Ms. Thompson responded it was from the Planning Commission, which had followed staff's recommendation. Mr. Phan wanted Council to adopt the Ordinance with staff recommendations (not the Planning Commission) with changes noted by Mr. Thomas earlier, and his one change as discussed – on the appeal process.

City Attorney Diaz read aloud the title of Ordinance No. 38.834, "An Ordinance of the City Council of the City of Milpitas Amending Sections of Chapter 10 of Title V of the Milpitas Municipal Code Establishing an Administrative Hearing Process and Discontinuing the Planning Commission Subcommittee."

(2) Motion: to note the exemption, per California Environmental Quality Act (Guidelines Section 15061(b)(3) (Common Sense Exemption) and Section 15378(b)(5) (not a Project); to

waive the first reading beyond the title and introduce Ordinance No. 38.834 for an administrative hearing process, including language edits in the ordinance as requested and directed by Council

Motion/Second: Councilmember Phan/Councilmember Montano

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

COMMUNITY DEVELOPMENT

16. Planning Commission By-laws

Planning Director Ned Thomas displayed a timeline of past actions regarding updated By-laws for the Milpitas Planning Commission including various amendments. He reviewed with Council the recommended changes, including deleting reference to the Planning Commission Subcommittee (per prior item above), and changing the election of Chair and Vice Chair to January, as other Commissions did. The by-laws included other minor edits.

Councilmember Nuñez asked if all City Commissions were doing this. Staff responded that the Commissioners Handbook for all Commissioners was adopted in 2018 and by-laws for all other were already updated in 2019. He asked why the Planning Commission was required to state a reason for abstaining from a vote on any item (it was not state law, per City Attorney).

Mr. Nuñez also commented about members putting items onto the Commission agenda. The City Attorney could clarify in scope the items that would be within their duties and responsibilities.

Motion: to adopt Resolution No. 8892 approving the Milpitas Planning Commission By-laws update, including changes requested by Councilmember Nuñez

Motion/Second: Councilmember Montano/Councilmember Nuñez

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

PUBLIC SAFETY

17. Ordinance No. 172.6 Massage Businesses

City Attorney Chris Diaz presented the massage regulations ordinance update, which was very much needed in the Milpitas Municipal Code dealing with many community issues of concern.

He provided history, including statewide legislation Senate Bill 731 in 2010 and Assembly Bill 1147 in 2014, of regulatory controls on massage businesses throughout the state, with changes to those statewide in the past decade. The legislation reflected official's desire to deal with prostitution, sex trafficking and health & safety issues. Mr. Diaz listed key changes in local law in the new ordinance including potential for massage establishment permit revocation and the enforcement ability by city officials.

Compliance with the new ordinance was proposed to occur by January 1, 2020. Massage therapists operating in the City would have to get state certification by that date also.

Mayor Tran commented in support for the ordinance, and stated his concern for girls and women in the businesses. He noted the important role of the Police Department to be called in to investigate such businesses when needed. He asked the City Attorney to clarify practitioner permit and massage practitioner versus therapist. Mr. Diaz would get back to him on the exact definitions.

Councilmember Nuñez asked if code enforcement would be done by Milpitas Police and whether there would be active enforcement or other steps. Assistant. Police Chief Moscuzza came to the podium to reply on the police's role (on violation of law or criminal acts) versus code enforcement (applying the municipal code locally). Mr. Nuñez wanted to do more than just adopt an ordinance to prevent issues of prostitution or ill treatment or trafficking of girls/women at

massage businesses.

Vice Mayor Dominguez was in favor of the certification process, including a labor component and concern for labor exploitation. She asked to understand permit revocation process.

Mr. Diaz explained what would be required come January 1, 2020, if City Council did adopt the proposed ordinance.

There was discussion of Certified Massage Therapist and Certified Massage Practitioner, and the level of schooling required for state certification from the California Massage Therapy Council. Vice Mayor Dominguez supported 500 hours of education, as required.

Councilmember Nuñez also supported that. He sought clarification about which City Department staff would enforce the new regulations. Planning and Police would allow for the Massage Establishment Permits.

City Attorney Diaz read aloud the title of Ordinance No. 172.6, “An Ordinance of the City Council of the City of Milpitas Amending Chapter 6 of Title III of the Milpitas Municipal Code Relating to Massage Establishments and Practitioners.”

(2) Motion: to waive the first reading beyond the title and introduce Ordinance No. 172.6 related to updating regulations for massage establishments in Milpitas

Motion/Second: Councilmember Nuñez/Vice Mayor Dominguez

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

LEADERSHIP

18. Update on City Council Rules Subcommittee

Assistant City Manager Ashwini Kantak provided background on meetings to date of the City Council Rules Subcommittee. She detailed feedback from the Mayor and Vice Mayor on how that Subcommittee would operate to review City Council agenda items, approve agenda topics, and meeting management items.

She identified elements of the scope and guidelines of the subcommittee. It would review and approve the next City Council agenda, and look at a draft of the subsequent meeting, and review a rolling six months’ list of Council agenda items. She described a new Agenda Item Request Form (draft included in the agenda packet) City Councilmembers would submit five days before a Rules meeting to the City Manager, City Attorney and City Clerk. Those forms would provide opportunity for review by the Rules Subcommittee, but not be required to be approved before adding a Councilmember’s item to any regular meeting agenda.

Also discussed was criteria for consent calendar items (five bullets displayed). Items removed from consent may be heard last or at a subsequent meeting.

Vice Mayor Dominguez thanked the staff for work on this proposal and asked for approval from her colleagues.

Councilmember Nuñez heard no mention of administration bringing things forward to Council. The process allowed for more discussion of items coming forward to the full City Council for things being requested. In this way, not all items would be brand newly heard for the first time at a City Council meeting.

Motion: to receive update report from staff and direct staff to incorporate the recommendation for implementation of the new procedures of the City Council Rules Subcommittee

Motion/Second: Vice Mayor Dominguez/Councilmember Phan

Motion carried by vote of:

AYES: 5

NOES: 0

19. Resolution related to Interim City Manager

This item was added to the consent calendar. Earlier in the meeting, the City Attorney had announced the specific salary for the City Manager position. Adopted Resolution No. 8893 affirming the appointment of Steven McHarris as City Manager on an interim basis and approving specified salary (\$298,000) and benefits for the position. No budget amendment was necessary and therefore was not included in the vote on consent.

REPORT OF MAYOR

20. Planning Commission appointment

City Attorney Diaz explained why this topic was back on the agenda, and defined the California Government Code section with the Mayor's duty to make appointments to Commissions, Committees and boards, with concurrence by the City Council.

Mayor Tran commented, and spoke in support for Commissioner Ricky Ablaza, He asked City Council to send him any recommendations they may have for appointments to various Commissions. He also asked staff to send out Commission rosters to the City Council and indicate where there were vacancies.

Councilmember Nuñez was glad the appointment was back on the agenda this evening. He would seek to make some recommendation to other Commissions over the summer. He commented about other Commissions and terms of service.

Motion: to appoint Ricardo Ablaza to the Milpitas Planning Commission to a term that would expire in December 2020

Motion/Second:

Councilmember Nuñez/Councilmember Phan

Motion carried by vote of:

AYES: 5

NOES: 0

NEXT AGENDA

21. Preview next agenda

The next City Council agenda would a Special (not regular) meeting on August 13, not on August 6, based on the vote earlier on consent.

Councilmember Montano requested to close the meeting with a moment of silence in memory of Bud LoMonaco Sr., who died June 12 in San Jose.

ADJOURNMENT

Mayor Tran adjourned the meeting at 11:05 PM.

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