MEETING MINUTES
CITY OF MILPITAS

Minutes of:	**Special Meeting of Milpitas City Council**
Date:	**Thursday, July 3, 2014**
Time:	**12:30 PM**
Location:	**Milpitas City Hall** **Committee Conference Room, 1st floor** **455 East Calaveras Blvd., Milpitas**

ROLL CALL

Mayor Esteves called the meeting to order at 12:31 p.m.

PRESENT: Mayor Esteves, Vice Mayor Polanski, Councilmembers Indihar Giordano and Montano

ABSENT: Councilmember Gomez

APPROVAL OF AGENDA

Motion: to approve the agenda, as submitted.

Motion/Second: Councilmember Indihar Giordano/Vice Mayor Polanski

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

PUBLIC FORUM

None.

ANNOUNCEMENT OF CONFLICT OF INTEREST

City Attorney Ogaz asked the Mayor and Councilmembers if they had any personal conflicts of interest on today's agenda. Mayor Esteves announced he is a Santa Clara Valley Transportation Authority (VTA) Board Member and asked the City Attorney if this would be a conflict. City Attorney Ogaz replied it would not be a conflict in terms of acting on this item today.

APPOINTMENT OF SPECIAL COUNSEL

City Attorney Ogaz reviewed the recent action taken by VTA against the City. He stated the VTA sought a court order to force the City to issue an encroachment permit that would allow for a full closure of Dixon Landing Road for an eight month period. He added currently there is a partial closure of Dixon Landing Road. City Attorney Ogaz confirmed the judge denied the motion from VTA, and the City prevailed, but VTA may file an appeal. Because the appellant landscape requires more specialization, he thought it would be best handled by an outside firm. Additionally, he stated the City does not know if VTA is going to actually file an appeal, but if it does, staff recommends that Berliner Cohen handle the appeal process for the City. He said the City Attorney's budget could accommodate the cost and no appropriation of money is necessary. City Attorney Ogaz asked the Council to approve the staff recommendation to enter into a contract with Berliner Cohen to handle the appeal and for the contract not-to-exceed $35,000.

Vice Mayor Polanski asked how long the VTA has to appeal. City Attorney Ogaz replied he believes they have 30 days to appeal.

Councilmember Indihar Giordano inquired if VTA files these types of lawsuits often. City Attorney Ogaz believed it was unprecedented in the BART construction. Councilmember Indihar Giordano was happy the City prevailed and would be in support of hiring special counsel.

City Manager Williams stated VTA indicated a full closure would not impact its overall construction schedule for the opening of the Montague Station. He

added when this project went through the Environmental Impact Review, it was only cleared for a partial closure not a full closure.

Councilmember Montano asked why does VTA want the full closure and what are their compelling arguments. City Attorney Ogaz replied VTA's arguments are that full closure would allow pedestrian bicycle safety that cannot be addressed in the partial closure and the roadway width is insufficient, yet these issues were never addressed in the two years leading up to the partial closure. City Attorney Ogaz suspected the problem was lack of proper planning by VTA.

City Manager Williams noted even though the City prevailed in the lawsuit, staff is continuing to work with VTA to mitigate the traffic impacts.

Councilmember Montano stated she did not want full closure and concurs with staff's recommendation.

Mayor Esteves congratulated City staff on the outcome of the lawsuit, stated it was necessary to spend resources to defend the City, and supported staff's recommendation to hire outside counsel.

Vice Mayor Polanski asked how many businesses would be impacted by full closure.

City Manager Williams replied there are approximately 10 to 12 businesses in the immediate area, numerous businesses located on Milpitas Blvd., and also residents in the mobile home parks that would be affected by full closure.

Motion: to approve the appointment of Berliner Cohen as special litigation counsel, if the need arises, in the not-to-exceed amount of $35,000.

Motion/Second: Councilmember Indihar Giordano/Vice Mayor Polanski

Motion carried by a vote of:

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

ADJOURNMENT

Mayor Esteves adjourned the meeting of the City Council at 1:10 p.m.

The foregoing minutes were approved by the Milpitas City Council on August 5, 2014

Kathy Ynegas, Deputy City Clerk