

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS FINDING THE NEWBY ISLAND RESOURCE AND RECOVERY PARK AND ITS OPERATIONAL ACTIVITIES TO CONSTITUTE A PUBLIC NUISANCE

WHEREAS, numerous areas within the City of Milpitas are currently and repeatedly subject to inundations of particulates and/or gaseous matter causing obnoxious odors and potentially creating adverse health effects to persons residing, working or traveling within the City of Milpitas; and

WHEREAS, it has come to the attention of the citizens and City Council of the City of Milpitas that the Newby Island Resource and Recovery Park (Newby Island), located in the City of San Jose adjacent to the City of Milpitas including public and private properties located within Milpitas, is a continuing source of odors to the Milpitas community; and

WHEREAS, citizens of Milpitas and other affected persons have concluded that the source of the odors plaguing the region is the combined activities taking place at Newby Island, including the composting facility, the recycling facility, the landfill facility, and transportation of refuse and other materials to and from Newby Island; and

WHEREAS, numerous persons have sent signed postcards to City Hall voicing opposition to the expansion of Newby Island, concluding it is a public nuisance affecting schools and children’s health, and demanding a halt to the expansion of the landfill and permits that would allow it to increase in height by 95 feet and thus to expand and extend the life span of the landfill, and

WHEREAS, it has been reported in a March 16, 2015, Milpitas Engineering Report that the Bay Area Air Quality Management District (BAAQMD) had recently issued three (3) Public Nuisance Violations to the Newby Island Landfill and two (2) to the Recycling at Newby Island; and

WHEREAS, the City of Milpitas Odor Complaint Hotline has received 678 odor complaints in calendar year 2014, 156 odor complaints just in the month of December 2014, 394 odor complaints in the month of January 2015, and 110 odor complaints in the month of February 2015; and

WHEREAS, in a more recent BAAQMD report of March 30, 2015, the District connects the odors detected at Milpitas City Hall on December 8, 2014, to Newby Island; and

WHEREAS, citizens from Milpitas have testified at numerous public meetings and complained of the odor problem, stating their belief that the cause of these obnoxious odors is Newby Island, that many are of the opinion that numerous health-related conditions have been caused by the ongoing odors from Newby Island, and that such odors constitute a risk to public health and safety.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. That the operational activities taking place at Newby Island have an adverse and negative effect on the Milpitas community, mainly resulting in chronic odor emissions blanketing

the Milpitas community, its private properties, parks and public spaces on an ongoing basis, and those activities and the property upon which they are located within the City of San Jose are therefore hereby declared a public nuisance.

- 3. That issuance of the PD Permit PD14-014, currently pending before the San Jose Planning Commission would constitute an environmental impact as a result of the odors created at the Newby Island site, as found herein, and will cause an unacceptable negative effect on adjacent properties, namely on all public and private properties within the City of Milpitas and that issuance of that proposed Permit would be detrimental to the public interest, health and safety.
- 4. That the aforementioned Newby Island property, located in the City of San Jose on property to the west of the Milpitas border and adjoining the City of Milpitas border, which constitutes a public nuisance should be subject to an odor study to determine which activities are the specific sources of odor from the Newby Island site so that appropriate remediation can be crafted for any and all odor causing activities at Newby Island.
- 5. That BAAQMD, as a primary regulatory agency regarding odors at Newby Island, put in place sufficient regulatory reporting requirements and restraints to abate odors from Newby Island and to maintain an odor-free condition. To achieve this result, BAAQMD should participate in the aforementioned odor study and assure its credibility and implement its findings in creating future restrictions and enforcement.
- 6. That San Jose as the Lead Enforcement Agency (LEA) regarding the Solid Waste Permit at Newby Island place additional regulatory requirements and restraints to abate odors from Newby Island and regularly report to the public its inspections, investigations and findings regarding compliance with law at Newby Island.
- 7. The City Council directs the City Clerk to forward a copy of this Resolution to the City of San Jose Planning Commission, the City of San Jose LEA, Republic Industries, BAAQMD and CalRecycle.

PASSED AND ADOPTED this _____ day of _____, 2015, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

Utility Engineering Updates:

Water Program:

- The State Water Resources Control Board (SWRCB) adopted additional emergency regulations relating to the drought and water conservation on March 17 – see attached media announcement. Staff will prepare an ordinance for adoption.
- Staff attended a regional retailer coordination meeting at SCVWD on March 18, 2015.

Urban Runoff Program: Staff attended the monthly SCVURPPP coordination meeting.

Solid Waste Program: Staff attended the Bay Area Air Quality Management District Board Meeting on March 16 to hear a presentation on the Milpitas Area Odor Issue (see attached power point presentation). BAAQMD staff noted they have issued 3 Public Nuisance Violations to Newby Island Landfill and 2 to the Recyclery. Staff identified potential odor sources, continue to investigate odor complaints, will review the complaint process, and will amend their odor regulations. Staff will conduct a public hearing in Milpitas on April 23.

Montague Station to Close Temporarily for VTA's BART Silicon Valley Project Construction

Source: VTA

Beginning Monday, March 23, 2015, the Montague Light Rail Station in Milpitas will be completely closed for approximately five months. Modifications will be made to the station to accommodate the new pedestrian overcrossing over Capitol Avenue to the future Milpitas BART Station.

View a video with details at www.MassTransitmag.com/12053931

During the station closure, a shuttle will operate approximately every 15 minutes (same headway as light rail) between Capitol Avenue near the Montague Light Rail Station and Great Mall/Main Transit Center. Scheduled hours of operation for the shuttle are:

- Weekdays from 6 a.m. to 11 p.m.
- Saturdays from 6 a.m. to 10 p.m.
- Sundays from 7 a.m. to 9 p.m.

Construction activities during the five months will include the reconstruction of the existing stairs, elevator modifications, installation of a new escalator and construction of a deck connecting the bridge to the future Milpitas BART Station. When the station reopens in fall 2015, riders will be able to use the new station stairs; however the new escalator and the pedestrian overcrossing to the Milpitas BART Station will be completed in a later phase of construction. Once BART opens, the Milpitas Station will be served by two lines providing access to the entire BART system. The station campus will feature a bus transit center with connections to VTA, private shuttles, passenger drop-off/pick-up areas, parking facilities with ground floor retail, and convenient bicycle and pedestrian connections and storage. VTA has already reached the half way mark of construction on this major transportation improvement, the largest in Santa Clara County's history. The project is ahead of schedule with planned service to begin as early as fall 2017.

Advanced communications about the closure include rider notifications, directional signage to shuttle stops, station platform signage, social media, outreach to surrounding businesses and residents, and VTA Ambassadors will be available days before the closure to answer questions. For more information please visit vta.org/bart/milpitas, email vtabart@vta.org or call our project hotline at 408-934-2662.



BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

939 ELLIS STREET
SAN FRANCISCO, CA 94109
(415) 771-6000

***9C**

City Manager
APR 03 2015
RECEIVED

RACHELLE CURRIE
455 EAST CALAVERAS BLV
Milpitas, CA 95035

March 30, 2015

Dear RACHELLE CURRIE,

The enclosed report presents the results of an investigation conducted by our inspection staff regarding your air pollution complaint (# 218184) on December 08, 2014. If you have any questions regarding the information or conclusions in this investigation report, please contact Arnold Argao, at (415) 749-4979.

For more information regarding the Bay Area Air Quality Management District in general, please visit our web site at www.baaqmd.gov. Thank you for your interest in air quality.

Sincerely,

A handwritten signature in black ink that reads "Kelly J. Wee".

Kelly J. Wee
Director of Compliance and Enforcement Division

City Manager **COMPLAINT REPORT**

APR 03 2015

RECEIVED

Routing		
	Init	Date
Supv Insp	<i>pan</i>	3/26/15
Com Center Update	<i>JF</i>	3/30/15

CHANGES

ALLEGED SITE

Name: **NONE (UNKNOWN)** Site # **P8700**

Address: **(none given)**

City: **Milpitas** Zip: **95035**

DESCRIPTION

Type: **Odor**

Description: **Bad**

Occurrence Date: **12/8/14** Time: **1530** hours On-going

Pertinent Data:

COMPLAINANT ("C")

Last **Currie** First **Rachelle** Anonymous

Address: **455 East Calaveras Boulevard**

City: **Milpitas** Zip: **95035**

Phone number where "C" can be reached within 30-60 minutes: **(408) 586-3051**

Alternate phone number: () -

Referral from: **N/A** Petition - # of people:

How "C" contacted: **In Person** Date: **12/8/14** Time: **1616** hours

RESPONSE

First destination: **Complainant's location** Date: **12/8/14** Time: **1616** hours

Confirmed site: **Different from the alleged**

If the confirmed site is different than alleged, show exact site name and address

Name: **BFI- Newby Island Organics** Site # **A5472**

Address: **1601 Dixon Landing Road**

City: **Milpitas** Zip: **95035**

Contact:

Type of site: **Plant**

Referred to LEA: Yes No

CONCLUSION

This complaint is: **Confirmed**

Reason - **Emission detected with "C"; traced to source**

NOV# issued for

NOV# issued for

NOV# issued for

FOLLOW UP ACTION

"C" requests the following:

A copy of the written complaint report.

The final disposition of any enforcement action (NOV#) that may result from the filing of their complaint.

Inspector: **Arnold Argao**

551

Date: **3/19/15**

OBSERVATION

Wind direction: **from NW** Wind speed (mph): **0-10** NA
 Location taken at: **Complainant's location**

For odor complaints:

- ♦Odor detected with complainant: yes no
- ♦Same odor detected at the alleged site: yes no
- ♦Same odor detected upwind of the alleged site: yes no
- ♦Odor detected without the complainant within 60 minutes of the time of the allegation: yes no
- Is the odor from a compost operation: yes no
- Did the complainant allege health affects: yes no
- If unconfirmed, are there other sources in the area that may be the alleged source: yes no

For visible emissions, asbestos, fire-in, smoke, fire-out, soot, and dust complaints:

- Fire-in (visible smoke from chimney) observed: yes no
- Visible emissions observed: yes no
- Emissions exceed BAAQMD standard: yes no
- Open burning observed: yes no
- Allowable fire: yes no
- Fallout observed on the property: yes no
- Sample taken: yes no Lab No.
- Asbestos – sample taken: yes no Lab No.

Additional investigation:

A request has been made to the _____ group.

STATEMENTS

Complainant- "Our IS Department in another part of the City is also getting the odor. Odors happen all the time and it stinks. It has been smelling for many years. It got inside the building today as you can see, or smell. Today it was not the manure odor. I called Bob Bates at the City of San Jose LEA."

COMMENTS

LEA and non-District jurisdiction.

Mutual detection of the odor made with complainant. Odor was steady and non-fleeting. RI verified odor description with complainant. Odor detected was same characteristic compost odor previously and historically determined and observed and known to be sourced from large-scale composting operations at Site #A5472. On-site wind direction supports confirmation of the odor source. RI advised complainant her complaint was confirmed. One additional odor complaint (C #218191) for same odor was confirmed. Six total odor complaints were filed from the same location of Milpitas City Hall.

RI advised complainant Site #A9013- International Disposal Co. of CA & Newby Island- Republic Services Landfill, at the same location as Site #A5472, is also a potential known odor source. RI advised complainant of both operations and odor sources, and jurisdictional issues with the LEA (City of SJ Code Enforcement).

A confirmed complaint does not automatically indicate a violation of the state or Federal law or BAAQMD regulation.

RI investigated complaint as back-up for Inspector Patel, who was advised of complaint/investigation results. RI advised Site #A5472 of the confirmed complaint, and referred any additional Site #A5472 contact/follow up to Inspector Patel. RI to conduct further surveillance as necessary. NFA on this complaint by RI. The complaint is confirmed.

The complainant was contacted with the results of the investigation.

A confirmed complaint does not automatically indicate a violation of the state or Federal law or BAAQMD regulation.

Inspector: **Arnold Argao**

551

Date: **3/19/15**