

## MEETING MINUTES CITY OF MILPITAS

**Minutes of:** Regular Meeting of Milpitas City Council  
**Date:** Tuesday, May 2, 2017  
**Time:** 6:00 PM Closed Session / 7:00 PM Open  
**Location:** Council Chambers, Milpitas City Hall,  
455 East Calaveras Blvd., Milpitas

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- CALL TO ORDER** Mayor Tran called the meeting to order at 6:00 PM. City Clerk Mary Lavelle called the roll.
- PRESENT:** Mayor Tran, Vice Mayor Grilli, Councilmembers Barbadillo, Nuñez and Phan
- ABSENT:** None
- CLOSED SESSION** City Council convened in Closed Session to discuss labor negotiations with one group and two matters of anticipated litigation.
- City Council then convened in Open Session at 7:20 PM.
- ANNOUNCEMENT** City Attorney Chris Diaz made one announcement out of closed session from the City Council:
- The City Council believes that any further litigation against the landfill operation would likely not improve upon the changes mandated by the court in the class-action settlement, and would be an unnecessary and expensive use of taxpayer funds. Instead, Milpitas will concentrate its efforts on working in a constructive and positive way with the City of San Jose on diminishing odors and improving overall operations at the Newby Island Landfill. The Council has directed city staff to focus our energies on working closely with San Jose and the landfill's neighbors to ensure odors are kept to a minimum and the landfill is operated in a safe and efficient manner.
- PLEDGE** Mayor Tran led all in the pledge of allegiance.
- INVOCATION** Councilmember Phan quoted Jay Z for the invocation.
- SCHEDULE OF MEETINGS** Council Calendar/Schedule of Meetings for May 2017 – no changes
- PRESENTATIONS** Mayor Tran invited his colleagues to the speaker podium to help announce and distribute the proclamations on the agenda and one additional.
- He invited Vice Mayor Grilli to bring National Alliance on Mental Illness representative Diane to the podium as he proclaimed May 2017 as Mental Health Awareness Month. The Vice Mayor read aloud her personal remarks and asked for compassion toward those suffering from any form of mental illness.
  - He invited Councilmember Nuñez to proclaim May as Building & Safety Month, and the proclamation was accepted by Chief Building Official Keyvan Irannejad and several Building Inspectors and Plan Check staff.
  - Councilmember Nuñez presented a proclamation to Economic Development Director Edesa Bitbadal to celebrate Economic Development Week for May 7 – 13, 2017.
  - Vice Mayor Grilli and Councilmember Nuñez presented a Certificate of Recognition to members of the Vietnamese American Roundtable for organizing Black April Day commemorating April 30, 1975 (fall of Saigon, Vietnam).
  - Mayor Tran invited Councilmember Phan to present a proclamation for Public Service Recognition Week to be celebrated the week of May 7 – 13, 2017 and it was accepted by the City's Human Resources Director Tina Murphy accompanied by many City employees.

- He invited Councilmember Phan to proclaim Affordable Housing Week for May 12 – 19, 2017 accepted by Board members from Terrace Gardens, an affordable housing complex for senior citizens with 148 units.

**PUBLIC FORUM**

Michael Tsai, Milpitas resident, was thankful for living in the community and people needed to work together on issues in the community.

Voltaire Montemayor, Milpitas resident, pondered concerns of small business owners and low wage earners. The flag was down. Increase minimum wage soon.

Thomas Clavel, Milpitas resident, President of Sundrop homeowners, described a wall along I-680 that had a graffiti problem. The City sent residents to Caltrans, but they'd had no response. His group needed help from the city to get the graffiti painted. Councilmember Nuñez asked for a report back from staff and the City Manager concurred.

Robert Marini, Milpitas resident, referred to the last meeting and his comment on the Water Rates Task Force. The City Manager told him what he'd said was a "cheap shot" and Mr. Marini felt the City should show respect to all citizens of Milpitas. He asked for the City Attorney to inform the public what their first amendment rights were.

Dhaval Brahmhatt, Economic Development Commissioner, invited all to attend a nanotechnology in the environment event on May 16 - a full day scientific event.

**ANNOUNCEMENTS**

City Manager Tom Williams made four announcements: (1) the City was at 50% design phase for improvement to Calaveras Road, with construction to start in June and be completed by the end of August, (2) stop signs were installed at Old Calaveras Road near Evans/Piedmont and Interim City Engineer Greg Chung provided photos overhead to display what was installed on the ground and the signs, (3) the City was newly on "Next Door" network online, where there were 50 neighborhood groups in Milpitas, and (4) Monday, May 15 at 9:00 AM would be a Police Officers memorial ceremony.

**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. None were reported.

**APPROVAL OF AGENDA**

Motion: to approve the meeting agenda, as amended

City Manager Williams requested on public hearing agenda item no. 1, to continue that item unless anyone was present to comment (re: EPS foam food ware restriction). He noted that agenda item no. 5 (Sports Center sports field) was continued to a future meeting date in order to hold a community meeting on May 24. Councilmember Phan wanted to receive an update on this issue at this meeting. He did not recall direction to staff to hold a community meeting. Mr. Phan felt that residents could come to City Council to provide input.

Councilmember Nuñez wanted to hear more community input, as would the Mayor. Some were not pleased with the lack of urgency on this matter. The Mayor suggested a meeting three weeks out was not helping the community and two Councilmembers wanted to hear a staff report. Mr. Williams explained why the meeting was scheduled on May 24 for stakeholders and residents.

Vice Mayor Grilli stated she did not want to hear the issue at this meeting since speakers did not come to City Hall. She was unwilling to continue the conversation.

City Attorney Chris Diaz gave advice about the agenda approval: on item no. 1, he advised to open the public hearing and then to continue it to the next meeting.

Motion/Second: Councilmember Nuñez/Councilmember Barbadillo

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

**CONSENT CALENDAR**

Motion: to approve the Consent Calendar (items noted with \*asterisk), as amended

Mayor Tran asked to remove item no. 5 (Sports Center) from the consent calendar.

Councilmember Phan asked to remove item no. 8 (investment report) and to hear agenda item no. 3 prior to agenda item no. 2.

Motion/Second: Councilmember Nuñez/Councilmember Barbadillo

Motion carried by a vote of: AYES: 4  
NOES: 1 (Grilli)

- \* 6. Odor Report Received the monthly update of the odor control report.
- \* 9. Quarterly Financial Received the financial status report for the nine months ended March 31, 2017.
- \*10. Shaker Trailer for OES Accepted a donation of \$3,000 to the Milpitas Fire Department for deposit into the City's General Fund and appropriated the funds to the Fire Dept. Office of Emergency Services budget for the purchase of a shaker trailer from Big Shaker Enterprises LLC.
- \*11. Resolution Adopted Resolution No. 8659 authorizing the purchase of one RapidView IBAK CCTV all-in-one sewer inspection vehicle from Jack Doheny Companies through a sole source purchase, pursuant to Milpitas Municipal Code Section I-2-3.09 in the amount of \$337,528.
- \*12. Daniel Court Water Main Approved the project contract documents for Daniel Court Water Main and Service Replacement Projects No. 7110 and No. 7131 and authorized advertisement for bids.

**MEETING MINUTES**

Motion: to approve City Council meeting minutes of April 18, 2017

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

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

**PUBLIC HEARING**

- 1. Ordinance No. 293 on EPS Foam Food Ware The City Manager noted this matter would be continued to the next City Council meeting, and the City Attorney directed the Mayor to open the public hearing for any comments.

Speakers:

1) Jessica Lynam, of California Restaurant Association, spoke on behalf of members, stating that targeting one industry (food service) specifically was not the best solution. Her association's members would rather offer recycled product. CRA supported a robust outreach to restaurants in Milpitas, if the proposed ordinance was adopted.

2) Voltaire Montemayor, Milpitas resident, spoke at the podium.

Motion: to continue this matter (EPS foam food ware ordinance) and the public hearing to the May 16, 2017 City Council meeting

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

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

## UNFINISHED BUSINESS

### 2. Mid-Year Budget items for FY 2016-17

Interim Finance Director Jane Corpus was available to answer questions from the City Council.

Councilmember Nuñez inquired about the MedEvac Emergency Vehicle and whether it was a police or fire vehicle. Two public safety chiefs explained the vehicles, one was for rescue and the other for transport. One was to be assigned for the police SWAT team and the other for the Fire Department to transport people to a hospital (ambulance).

Councilmember Phan asked regarding the MedEvac, whether the City would receive transporting revenue from the County and the Police Chief replied no.

Councilmember Barbadillo asked if the police ever had such a vehicle in the past and the Police Chief replied no.

Councilmember Barbadillo asked some questions to the Fire Chief about ambulance service, noting the Council had recently approved one ambulance in the CIP. He asked if that meant Milpitas no longer needed contracted service with the County, and the Fire Chief responded no.

Councilmember Nuñez and Mayor Tran were supportive of the purchase of the vehicles.

Motion: to approve three Fiscal Year 2016-17 mid-year budget appropriations for MedEvac Emergency Rescue Vehicle, Interactive Learning Objectives (MILO) Range Theatre, and CIP No. 4273 Street Landscape Irrigation project

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

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

### 3. Wage Theft Ordinance

This item was heard prior to item no. 2.

Vice Mayor Grilli and Councilmember Phan had met with the Wage Theft Coalition of Santa Clara County. Both felt there was a need to protect the rights of workers additionally, beyond the recently adopted increase in the minimum wage in Milpitas. Workers felt the need for protection to be paid fairly. The Vice Mayor expressed the request for staff to study this topic and potentially return with a proposed ordinance for Council to consider adopting.

Councilmember Phan provided a definition of wage theft, when employers failed to pay employees all wages due or require overtime work but did not pay for it.

Councilmember Nuñez read about this topic in the San Francisco Chronicle recently and he supported the action requested so he could learn more about the issue. He inquired which staff would address the subject and the City Manager replied the Economic Development Director. Mr. Nuñez recommended staff reach out to the local Chamber of Commerce, too.

Next, Mayor Tran invited speakers to the podium.

Ruth Silver Taube thanked the City Council for addressing this issue and she spoke about the impact of the wage theft issue.

Hui Tran, private practice attorney from the Wage Theft Coalition, spoke about enforcement of judgments against employers. Collection was difficult for the employees and cities needed to put teeth into the law.

Mirna Enriquez, who worked at the Community Law Center and the coalition, said she had worked to help low income workers who lived paycheck to paycheck. She urged the City to hold all employers accountable.

Daisylynn Lee Hayes, a member of the Coalition and 9-to-5 organization, said wage theft was so wrong and she urged Council to study the issue.

Michael Tsai, Milpitas resident, agreed with the speakers and said this was a much older issue than many people realized. He read from a quote in the bible.

Voltaire Montemayor, Milpitas resident, said there was a good shepherd and workers should get retroactive pay. Sometimes people were intimidated to speak up about their fair wages.

Rob Means, 1421 Yellowstone resident, thanked Vice Mayor Grilli and Councilmember Phan for bringing this issue up. They were trying to balance the scales a little bit and he supported that.

Councilmember Barbadillo asked the audience members if any other cities had adopted a wage theft ordinance. Ms. Silver Taube came up and said San Francisco and San Jose had adopted ordinances while Sunnyvale and Mountain View were studying the subject. She talked further about contract work.

Motion: to direct staff to study the topic of wage theft in Milpitas and return to City Council with a report, and to later determine whether to bring to City Council an ordinance

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

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

**4. Amendment to Vali Cooper & Associates**

Interim City Engineer Greg Chung came to the podium to explain the need for an amendment to the agreement with consultant firm Vali Cooper & Associates. Services were related to support for the BART project and for Montague widening.

Motion: to approve Amendment No. 7 to the Agreement with Vali Cooper & Associates extending the term to January 31, 2018 in the additional amount of \$303,000 for the Silicon Valley Berryessa (BART) Extension Project No. 4265 and Montague Expressway Widening Project No. 4179

Motion/Second: Councilmember Nuñez/Councilmember Phan

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

**5. Continue Sports Field Turf discussion**

Recreation Director Renee Lorentzen stated that staff respectfully requested to continue the topic to return to Council later with more data. Recreation staff would get both sports organizations and the general public together to receive specific input. That public meeting was scheduled for Wednesday, May 24 for that purpose. Staff would gather the information on costs to operate and clean the fields with additional potential staffing.

Councilmember Phan did not recall that Council gave specific direction to hold a community meeting, while he felt that the City Council could receive comments at any Council meeting in the Council Chambers. He had asked for the specific financial impact. He disagreed with some comments made by staff.

City Manager Williams responded to Mr. Phan and specifically asked him not to criticize staff at the dais.

Councilmember Barbadillo asked Ms. Lorentzen how she would notify people of the May 24 meeting and if she would then bring back results at the first meeting in June. She responded that outreach would include e-mail and social media, and that she could bring the staff report in June.

Councilmember Nuñez stated that the Council normally would ask to always include the public on any issue and to allow them to voice their concerns. He would prefer the City hold the community meetings in the residents' own neighborhood.

Vice Mayor Grilli said her understanding was that staff was doing exactly what was asked, to bring back a report after looking into uses at the fields. How to look at all the pieces was important and she really appreciated staff's effort to get everyone together.

Councilmember Phan wanted to understand the purpose of the community meeting and to come out of that meeting with clear objectives.

Mayor Tran liked the idea for all to give their input on the fields and to give their opinion. It was hard to have a valid analysis if the sample size was small. Valuable information was really needed.

Councilmember Nuñez felt all were interested in the outcome and he agreed with Mr. Phan to invite all the right groups, with an interest in the fields, suggesting to push forward. He suggested various people to include in the community meeting (all users of Milpitas Sports Center along with sports teams).

Vice Mayor Grilli said that staff was trying to get all groups to attend the scheduled meeting. Staff could try its best, but could not force all people concerned to be there. She trusted staff would bring back an objective report and opinion.

Councilmember Phan stated he just learned about the community meeting tonight at this meeting. The conversation held was helpful, but was not what he expected.

Vice Mayor Grilli noted that the continuance was listed on the agenda, as was the May 24 proposed community meeting.

Councilmember Nuñez recommended to move on to agenda item No. 8. He thanked the Recreation Director for the time spent on this topic.

Motion: to continue the subject of use of Sports Center Sports Fields to a future City Council meeting after staff conducts the May 24 community meeting

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

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

## REPORT OF OFFICER

### 7. Silicon Valley Clean Energy

This matter was heard prior to item no. 2

Howard Miller, Saratoga City Councilmember and representative of Silicon Valley Clean Energy, spoke on the program available as an alternative to PG&E for provision of electricity. Community Choice was the program for procurement of power and it was carbon free energy with lower rates than PG&E. He described the steps for Milpitas to take if the City would like to join the Joint Powers Authority. No fee or "seed money" was needed to join. The earliest to get service going in the City of Milpitas would be January 2018.

Councilmember Nuñez read about this program and attended a meeting where he heard about the program, and learned Milpitas was the only city in Santa Clara County not participating, except those where a city had its own utility.

Vice Mayor Grilli thanked Mr. Nuñez for bringing this topic up. Mrs. Grilli asked Mr. Miller about feedback from customers. He referred to other governments and what they'd learned along with the outreach that had been done. His CCE was the only one in California that was greenhouse-gas free.

Councilmember Phan asked how did rates compare to PG&E. Mr. Miller replied about all the schedules PG&E had and multiplied by .99 for the power portion only of a PG&E bill. He explained that the City of San Jose was in process to form its own CCE program.

Councilmember Nuñez said it sounded like there was desire to continue looking into it and was glad information was shared with Council and staff. He urged staff to research options and to request a report back on the subject. He urged looking at options north of here too in Alameda County.

City Manager Williams responded the City would do its due diligence and bring it back to City Council. Mr. Miller emphasized the two factors to consider for CCE were the green standard of the policy and the savings rate desired.

Mayor Tran invited speakers from the audience.

Speakers:

Rob Means, Milpitas resident, said thank you to the City Council for considering this program. He also quoted San Jose Mayor Sam Liccardo in last Sunday's paper on that City's forthcoming CCE program. Mr. Means urged a 100% renewable energy plan.

Voltaire Montemayor, Milpitas resident, was concerned about whom to call if there was a problem (if no longer PG&E). He cared about carbon emissions into the environment.

Motion: to direct staff to study the Community Choice Energy program and to report back to the Council on possible options for the City of Milpitas

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

AYES: 5  
NOES: 0

## NEW BUSINESS

### 8. Investment Report

Councilmember Phan had removed this item from consent and asked staff questions about the investment policy and what the City's funds were invested in.

Interim Finance Director Jane Corpus explained that this was the quarterly report on how funds were invested for the City of Milpitas, in a limited array of investment vehicles that she identified. All investments of these public funds were required to be based on the adopted City investment policy, with a rate of return approximately 1%.

City Manager Tom Williams commented that the City could only invest in Treasury bonds and the Local Agency Investment Fund (LAIF) - not the stock market, property, mutual funds or other types.

Mayor Tran asked what was the dollar amount of the invested funds return. Ms. Corpus did not have that number and could report back on that.

Councilmember Phan asked for clarification of the investment policy. He wanted to understand who made decisions on investments and by what law or policy. Ms. Corpus

explained that the City's investment policy was brought to the Council annually in June upon following the required California Government Code on what cities were authorized to invest in.

Councilmember Nuñez wanted to learn who strategized the investments for the City. Ms. Corpus replied that Finance Department staff did so with brokers who provided advice on investments. He asked if previous City Councils discussed the kinds of companies to invest in. If not, Mr. Nuñez suggested that maybe the Council should schedule that for discussion.

City Manager Williams said that staff could bring the investment policy back to City Council. Ms. Corpus stated that was usually done each year in June. Mr. Williams responded staff could bring the investment advisors, and include which bank the City did business with.

Motion: to receive the investment report for the quarter ended March 31, 2017

Motion/Second: Councilmember Nuñez/Councilmember Phan

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

## **REPORTS**

Councilmember Phan said the following day there would be a meeting of the City Council's Subcommittee on non-profits and how to support those.

## **ADJOURNMENT**

Mayor Tran adjourned the regular City Council meeting at 10:49 PM.

**The foregoing minutes were approved by Milpitas City Council on May 16, 2017.**

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**Mary Lavelle**  
**Milpitas City Clerk**