

**MEETING MINUTES
CITY OF MILPITAS**

Minutes of: Regular Meeting of Milpitas City Council
Date: Tuesday, December 19, 2017
Time: 6:00 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 meeting to order at 6:00 PM. City Clerk Mary Lavelle called the roll.
- PRESENT:** Mayor Tran, Vice Mayor Grilli, Councilmembers Barbadillo and Nuñez
- ABSENT:** Councilmember Phan was absent at roll call and arrived in Closed Session.
- CLOSED SESSION** City Council convened in Closed Session to discuss labor negotiations, litigation and personnel matters, as listed on the agenda. City Attorney Chris Diaz said that Mayor Tran would recuse himself on Closed Session agenda item (e).
- City Council then convened in Open Session at 7:12 PM with all members present.
- ANNOUNCEMENT** City Attorney Chris Diaz reported that the Council had concluded labor negotiations with Milpitas Employees Association and would formally approve the terms at the January 2018 Council meeting.
- PLEDGE** Girl Scouts Troop members presented the flags and led the pledge of allegiance.
- INVOCATION** Mayor Tran congratulated the Milpitas High School Trojans football team for its recent success with their state championship. He offered a prayer to start the meeting.
- PRESENTATION** Mayor Tran and all Councilmembers honored two retiring top City officials: the Chief Building Official Keyvan Irannejad, presenting to him a commendation for his 30 years of distinguished service and retiring Fire Chief Robert Mihovich presenting to him a commendation for his 37 years of distinguished service. Council, staff and audience members then took a break for a brief reception with refreshments in the City Hall lobby.
- City Council returned to the dais at 7:48 PM to take up the business on the agenda. Mayor Tran offered congratulations to the next appointed Chief of Police Armando Corpuz.
- PUBLIC FORUM** Joseph Weinstein, 646 Hamilton Ave. resident, took a moment to thank the elected officials and City staff for all of their service to the community. He appreciated everyone and wished everyone Happy Holidays.
- Steve Sedell, resident, reported that on Los Coches between S. Hillview and Sinclair Horizon, it had been adversely impacted by construction work on the Berryessa Creek. Water was turned off and some plants had died as a result.
- Councilmember Nuñez requested that the City Manager look into if there was something that could be done about the issue reported. Staff would do so and report back to City Council.
- Robyn Chen spoke about the Commissioner appointment process. She would like further consideration of a new process to improve appointments. Having only two Councilmembers screen applications would leave out some consideration by all City Councilmembers. Other cities interview all applicants and she thought Milpitas City Council should do that.

ANNOUNCEMENTS

Acting City Manager Steve Pangelinan mentioned that City offices were closed for holidays on Friday, December 22 and Monday, December 25, 2017. He introduced Police Captain Armando Corpuz, who was a 26 year veteran of the Milpitas Police Department, who would become the City of Milpitas’s next Chief of Police on January 7, 2018.

Councilmember Phan mentioned that earlier, in May, the subcommittee on non-profits asked to consider a revised bingo ordinance, so he asked staff to place this item on the next City Council agenda in January 2018.

Vice Mayor Grilli requested, regarding the Housing Nexus Study, to consider making that a Special Meeting to discuss housing and to ask for a report from the City Attorney on legislation from the state, and how to implement it. The City Attorney responded he would be happy to do so. He’ll work with staff to find a date for that topic only. Next, Mrs. Grilli stated she would prefer the Just Cause Ordinance to be considered in February (not January). She and another Councilmember were getting some public input on this topic prior to that meeting.

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. No contributions were reported.

Councilmember Barbadillo may have a potential conflict, item no. 11 on his request on Main St. zoned commercial only, so the City Attorney said he requested that this item be deferred, until his request for a letter from the FPPC on whether or not Mr. Barbadillo could participate in the topic and whether he had any conflict.

APPROVAL OF AGENDA

Motion: to approve the meeting agenda, as amended

Acting City Manager Pangelinan requested to remove agenda item no. 17 (Lions Club co-sponsor) from the agenda and move that matter to a future meeting date.

Vice Mayor Grilli noted that Council would defer item no. 11 (Main St. commercial) and she asked also on item no. 7 (update on CAP), to have staff bring it back later.

Motion/Second: Vice Mayor Grilli/Councilmember Barbadillo

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

CONSENT CALENDAR

A request was made for Councilmembers to state aloud which items they wished to place onto the consent calendar list.

Motion: to approve the consent calendar consisting of agenda items no. 1, 2, 9, 14, 18, 20, 21, and 22

Motion/Second: Vice Mayor Grilli/Councilmember Phan

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

*1. Council Calendars

Accepted the meeting calendars for December 2017 and January 2018. Also, the Council voted to approve the cancellation of the regular meeting of January 2, 2018.

*2. Meeting Minutes

Approved City Council meeting minutes of December 5, 2017.

PUBLIC HEARING

3. Appeal of Planning Commission decision re: 691 S. Milpitas Blvd.

Planning Director Brad Misner described the proposed Conditional Use Permit for the Ismaili Cultural Center, history of the application, the Planning Commission decision made on October 25 and the appeal filed correctly with the City Clerk (and fee paid) necessitating the Public Hearing on this date. A 9,667 square foot space on South Milpitas Blvd. at Gibraltar in an

existing building was proposed for the cultural center. He described the shared parking available on site and the need for the center's use. The center would primarily operate at non-business hours and he reported that all City standards were met by the applicant. Staff recommended upholding the Planning Commission's decision to permit the CUP and the use by the applicant, and to adopt a resolution to deny the appeal filed, following the public hearing.

Councilmember Barbadillo asked if all requirements were satisfied by the applicant (those five listed on slides overhead) and Mr. Misner replied yes.

Next, the appellant was invited to the podium, and Mr. Eric Clapp addressed the Council. He represented a company that had purchased the former Johnson & Johnson property in order to offer a transit-oriented location for employers in the Silicon Valley. His company wanted to promote a campus to one corporation to come to Milpitas. He believed this to be solely a property rights issue, not one of religious freedom or expression.

Ted Griswold, an attorney for the applicant Ismaili Cultural Center, stressed that he wished to follow the law and all rules. Zoning laws were followed and all conditions met with this project proposal. The Center and its members had been in Milpitas for decades. He talked about industrial and commercial uses, versus all the housing coming in to Milpitas. He asked for a rapid decision and not to wait 120 days to issue the decision on the appeal and the project.

Muneera Merchant, President of Aga Khan Council, oversaw the work of the center and its many volunteers. She described the center's community with its broad goals, including peace and understanding. The Ismaili Center started in 1988 in Milpitas.

Next, Mayor Tran opened the public hearing.

Larry Ciardella, resident and Planning Commissioner, thought this would be a good project for the City, and the group did a lot of good things for the City including work with St. Jude's.

Shaheena Daradia had been with the center for 28 years, and the group did a lot of projects in the community, many of which she listed.

Zahra and Misbah Surani (sisters) both were born in Milpitas and went to the local high school, now in college. They grew up in The Pines and were involved with Girl Scouts for many years.

Sheila Lalani, belonged to Ismaili Cultural Center since it opened in 1988. She'd made life-long friends at the Center.

Rozina Kapanch, Coordinator of Special Education Programs at the Milpitas Unified School District, her family had moved to Milpitas for the cultural center and her parents still lived here.

Amin Fazal, resident and part of the Center, moved here in 1996 because the Center was in the city. It trained the kids to be part of the community, especially the school district.

Amy Peterson, representing Dollinger Properties a local land development company, owner of property across S. Milpitas Blvd. Her company felt that assembly uses were not compatible with R&D uses for businesses. If Council was approving this use, it would not be received favorably by nearby businesses.

Matt, worked with business tenants, said that assembly uses, with existing occupancies, for the property in question had been denied for assembly use in the past.

Cathy Consolino, representing the landlord of the building, said these were very good tenants in the building. Its use blends and balances with the other businesses. Others did not even realize the center was there.

A man, on behalf of the center, said the assembly use would not prevent other tenants from coming in. Hazardous materials would not affect assembly uses. Milpitas had been attracting less heavy industrial users and more high tech use in buildings. He pointed out others nearby.

Steve Sedell, resident, noted a past applicant for assembly use that was allowed, after a request for a change in the law, which was the Al Hillal Mosque.

Anwar, volunteer president of Aga Khan Council for some years, discussed the traditional service of the community. Milpitas was a technically diverse community they were glad to be part of. He worked at Flex in Milpitas, where cutting edge technology was being developed.

A man, a potential buyer for a nearby property, stated that he did not have any objection to the cultural center nearby.

(1) Motion: to close the hearing following all the speakers

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

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

City Attorney Diaz asked Councilmembers to disclose any communication they'd had on this matter.

Vice Mayor Grilli: talked to applicant and Eric Clapp, and drove by the site by herself.

Councilmember Phan: met with applicant and appellant.

Councilmember Nuñez: met with each side once.

Councilmember Barbadillo: met with applicant, chatted with Mr. Clapp after the Planning Commission meeting, and also he shared office space with attorney Mr. Griswold.

Mayor Tran: met with applicant (not with appellant).

Councilmember Phan asked staff what outreach was done. Mr. Misner replied the standard noticing was done for public hearings. More history was requested and Mr. Phan referred to an analysis Council had requested on impacts of zone changes on the jobs/housing ratio. He felt he needed to have the report with data to help make his decision. He asked additional questions about compatible uses.

Councilmember Phan said Council asked for a study session on issues related to land use and employment. They had targeted December and asked if staff was still planning to do so. Mr. Misner responded, that on land use regarding the General Plan, it would be discussed with the Council in 2018.

Economic Development Director Edesa Bitbadal came forward and responded that the study on industrial land would come back on February 6, after going to several Commissions first.

City Attorney Diaz provided some guidance on the decision to be made by City Council following the public hearing on the appeal on the land use decision, and when it must be made (within 120 days).

Councilmember Phan next questioned the applicant, who responded to Mr. Phan about why the site was so particularly appropriate. Mr. Phan asked if it was appropriate for staff to work with the applicant to find another site that would be appropriate for the center and was compatible. Ms. Bitbadal reported that she had a list of five viable locations that the assembly use could consider locating.

Mayor Tran asked staff how those locations were arrived at, and if the owners would consider renting to the Center. Ms. Bitbadal responded.

Vice Mayor Grilli asked for clarification if the applicant had asked for other sites. Ms. Bitbadal responded that she made the list upon discussion with the appellant. Mr. Diaz reviewed past action of Council about the ordinance adopted to allow for assembly uses in industrial areas. This use fits under the General Plan amendment for this use, as adopted by City Council last February. The Vice Mayor said she would approve staff's recommendation, as a result.

Councilmember Barbadillo reviewed facts. Zoning allowed places of assembly with a CUP, as long as conditions were met, and this applicant did so. He commented on the point of view of the appellant, and asked if he'd done some review of uses in the industrial area.

Appellant Eric Clapp commented further in response to Mr. Barbadillo, and stated he wanted to be a very good neighbor to the cultural center.

Councilmember Nuñez asked staff the meaning of "assembly." Mr. Misner said it was inclusive of places where people congregate, like places of worship, social organizations, Chamber of Commerce and others. Being a good neighbor was important and follow all the rules.

Councilmember Phan would like some comfort to businesses that could be affected by these types of uses in the future. In November, staff time was approved to come back with a plan for preservation of industrial space, so he wished to know when Council could expect that. Ms. Bitbadal responded that she had been working with consultants on a study regarding fiscal impacts of land conversion to non-business uses.

Councilmember Phan requested consensus of Council to direct staff to halt applications for uses other than what was intended in industrial zones, until coming back with the study, and with the appropriate study session held.

Councilmember Nuñez asked how many such proposals were in the pipeline. Mr. Misner replied there were no active applications in the pipeline.

Councilmember Barbadillo asked Mr. Phan to clarify, to understand impacts of non-industrial uses in industrial areas.

Vice Mayor Grilli wanted to clarify what Councilmember Phan was asking. The adopted General Plan amendment allowed for assembly uses. She was not ready to wait per Councilmember Phan's request, since the current rules on the books allowed the use.

(2) Motion: to adopt Resolution No. 8733 to deny the appeal of the Planning Commission decision to approve Conditional Use Permit No. UP17-0002 to allow a cultural center use in an industrial zone and shared parking

And: staff would come back to City Council, late in February, with some recommendation for changes in the General Plan, if warranted, to change the current zoning in industrial areas, especially if no applications were in the pipeline.

Motion/Second: Councilmember Nuñez/Councilmember Phan

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

At 10:06 PM, Vice Mayor Grilli asked to hear agenda items no. 16 and then no. 15.

UNFINISHED BUSINESS

4. Agreements for Senior Lifestyles development

Acting City Engineer Steve Erickson stated this matter was brought back from the last City Council meeting, to request approval of agreements for the Senior Lifestyles Senior Assisted Living development, Phase I on South Main Street.

Mayor Tran wanted to support this project, and the City needed to have that lot developed, as it was empty presently, near The Pines neighborhood.

Councilmember Phan asked the City Attorney if the Attorney General's office responded to the City and Mr. Diaz replied no, not yet. Mr. Phan did not wish to vote until that came back.

Vice Mayor Grilli stated she'd had all her questions answered, and got a letter today clarifying the affordable housing units.

Mayor Tran invited a speaker from the audience.

Voltaire Montemayor, resident, said housing was the main thing and it was good for everybody, and would help small businesses.

Motion: to approve and authorize the City Manager to execute the Subdivision Improvement Agreement, the Public Street Maintenance Agreement and the Fee Reimbursement Agreement for a 199-unit senior assisted living rental residential development by Milpitas Phase I, LP known as Senior Lifestyles

Motion/Second: Vice Mayor Grilli/Councilmember Mayor Tran

Motion failed by a vote of: AYES: 2 (Tran, Grilli)
NOES: 3

5. Resolution for Remaining General Fund Balance

This matter was not heard and would be continued to a future date.

6. Resolution – AB1600

Finance Director Will Fuentes explained the need for this action by the City Council every year, describing the status of developer fees paid to the city and those unexpended at year's end.

Motion: to adopt Resolution No. 8734 of the City of Milpitas making certain findings pursuant to the Mitigation Fee Act for fiscal year 2016-17 regarding continuing need for unexpended development fees and review and accept the annual developer fee disclosure information.

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

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

7. Climate Action Plan

This item was not heard and would be rescheduled to the next Council meeting.

8. Council Subcommittee on Appointments

Mayor Tran asked for remarks from Councilmember Nuñez, who noted there would be various inputs to help two Councilmembers with recommendations for Commission appointments.

Councilmember Nuñez invited Recreation Services Director Renee Lorentzen to come forward. She provided some history, and that Council had asked for a subcommittee to be formed and interview applicants for consideration for appointment. Later, the subcommittee would come back for formation of joining Commissions together, or leaving those alone. He wanted to model the County for other Commissions. This meeting was to come up with subcommittee membership of two City Councilmembers.

City Attorney Diaz pointed out that the directly-elected Mayor had authority to make appointment of Commissioners, while he certainly could receive recommendations from the subcommittee. Mayor Tran noted, thus, that he could not serve on the subcommittee.

The Mayor invited one speaker from the audience.

Vicky Young, Milpitas resident, preferred that preliminary screening of Commission applications should be done by City staff. Then the review should be done by entire City Council, as more appropriate. City Council was more for high level strategic planning. Other cities had the entire Council do the interviews. She said that Commissioners were volunteers and local heroes.

Mayor Tran wanted to have the Council be more involved in choosing who gets to be on Commissions. He supported a change in the process, with more input into the decisions. He

cared about good faith, to honor the process and to decentralize power at City Hall. He recommended Councilmembers Phan and Nuñez to be on the subcommittee.

Vice Mayor Grilli was not part of the last discussion on this topic and she was glad the Mayor wanted a new process. What about gathering input from Council liaisons to Commissions, giving input to the subcommittee, she asked.

Councilmember Nuñez said he looked at some neighboring cities for example processes. They could have a rotating process, since there could not be three Councilmembers serving on a subcommittee. Make it more Council-driven and to get started, to fill vacancies.

Vice Mayor Grilli inquired, if the subcommittee made recommendations, did that need to go to the Mayor first, before the full City Council? The City Attorney said if the subcommittee made recommendations, those would go to the Mayor for approval or not, and he can indicate if he agrees or not, and then full Council would vote. She wanted to confirm that all Commission applications on file be made available to the full Council.

Mayor Tran repeated his recommendation to appoint Councilmembers Phan and Nuñez to the new Subcommittee.

Councilmember Nuñez wanted to support what the Vice Mayor suggested, with more input from all the Council.

Councilmember Phan commended the Mayor for supporting a new process on this. He wanted to nominate Vice Mayor Grilli and Councilmember Nuñez.

Motion: to appoint Councilmembers Phan and Nuñez (base), then rotate in the Councilmember Commission liaisons as needed (none for Planning Commission), to serve on a new Council Subcommittee on Commission Appointments

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

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

*9. Appropriation per Agreement on Sunnyhills

Approved appropriation of \$250,000 in Fiscal Year 2017-18 from the Community Benefit Fund to the Planning and Neighborhood Services operating budget for agreement for the purchase of affordability covenants for the Sunnyhills Apartments complex at 1724 Sunnyhills Drive.

REPORTS

10. Appoint Councilmember

This item was not heard and would be rescheduled to the next Council meeting.

11. Proposal for Main St.

This item was postponed, awaiting a decision letter from FPPC regarding any potential conflict of interest of one City Councilmember.

12. Study on Retail

This item was not heard and would be rescheduled to the next Council meeting.

13. Teen Programming

This item was not heard and would be rescheduled to the next Council meeting.

NEW BUSINESS

*14. Bulletproof Vest Partnership Grant

Accepted the 2017 Bulletproof Vest Partnership (BVP) grant and approved an appropriation in the amount of \$5,630.70 into the Police Department's operating budget

15. Comprehensive Annual Financial Report FY 2016-17

Finance Director Will Fuentes came to the podium along with Amy Mayer of Maze & Associates to present the annual Comprehensive Annual Financial Report or "CAFR" (the annual audit). The audit format included an unmodified audit opinion (clean audit), the highest level of assurance for the City of Milpitas.

Councilmember Nuñez asked the Finance Director if the financial report was going to the Finance Subcommittee monthly. Mr. Fuentes responded that that would start in January. Mr. Nuñez asked variety of questions regarding many details in the report.

Councilmember Phan remarked that there should be very specific procedures regarding use of Cal-cards by city employees and officials.

Mayor Tran commented on noted concerns brought to light and thoroughly examined in the audit. They must ensure that the City was at an expected level of internal control.

Councilmember Nuñez returned to the document, and asked the auditor to explain why a materially accepted audit was good. Ms. Mayer stated that it showed that Finance staff was following all the rules and regulations of the City and doing their job properly.

Mayor Tran was ready to support the audit, while he believed further review was warranted.

Vice Mayor Grilli noted that audit reports were done every year, and were public. Anyone can research past audits of the City's finances.

Councilmember Barbadillo inquired about the process done by the auditors and asked about one project (swimming pool contract). The auditor said that was more of performance auditing and Mr. Barbadillo said it was maybe time for an ombudsman or internal auditor on staff. Councilmembers Barbadillo and Phan requested that as a proposal.

City Attorney Diaz said staff could bring it back on another meeting agenda.

Mayor Tran invited speakers from the audience.

Tom Valore, resident, had a question on one finding from the Water Task Force regarding the collection of direct hours and allocation of indirect hours, relating to how the city did business. He wondered if that methodology was correct, in order to get a more accurate picture.

Voltaire Montemayor, resident, said try to help resolve and a need for representations, canvass, disbursement and reconcile funds.

Motion: to accept the City's Comprehensive Annual Financial Report and other related Annual Audited Reports for the fiscal year ended June 30, 2017

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

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

Mayor Tran asked staff for copy of the audit from five years ago. Vice Mayor Grilli asked for hard copy of the audit report provided at this meeting.

**16. Appointment to SVCE
Board of Directors**

Economic Development Director Edesa Bitbadal reviewed the history of community choice energy efforts in Milpitas to date. The next meeting of the Silicon Valley Community Energy (SVCE) Board of Directors would be January 10, 2017. She further described recent action of the California Public Utility Commission and its impact on SVCE, which could result in delay in Milpitas enrolling in the program.

Ms. Bitbadal described differences between SVCE's GreenStart (50% renewable and savings of \$8973.50 per year) and GreenPrime (100% renewable and \$71,788 cost to the city) options for the City's purchase of electricity.

Mayor Tran asked if the City could switch options, if one was selected at this meeting and staff replied yes. He favored GreenStart to be fiscally conservative.

Vice Mayor Grilli asked if joining SVCE was to reduce greenhouse gas and to improve environment, or was it to save money? The Vice Mayor favored 100% renewable.

Councilmember Nuñez asked if this impacted a report that Engineering staff sent to the state and staff said no. It may be relative to the Climate Action Plan update, on reducing greenhouse gas. He asked if this option was for residents and commercial customers. Staff responded that this request was for the city as a consumer of electricity.

Councilmember Nuñez said he would support the GreenPrime, and wanted to follow the example of the other Santa Clara County cities, most of which joined at the 100% level.

(1) Motion: to appoint Vice Mayor Grilli as Boardmember and Economic Development Director Edesa Bitbadal as alternate on the Silicon Valley Clean Energy Authority Board of Directors

Motion/Second: Councilmember Nuñez/Councilmember Barbadillo

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

(2) Motion: to enroll the City of Milpitas in Silicon Valley Clean Energy GreenPrime for municipal electric service beginning May of 2018

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

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

17. Co-sponsor Request This item was removed from the agenda and would be scheduled on a future meeting agenda.

RESOLUTION

*18. Resolution - Traverse Adopted Resolution No. 8735 granting initial acceptance of public improvements for the Traverse project, Tract No. 10224, Project No. 2874 and approved a reduction in the performance bond, subject to a one-year warranty period and reduction of the faithful performance security to \$310,500 which shall be in effect for the duration of the warranty period; and granting authorization to the City Engineer to release the performance bond after the one-year warranty period without further City Council action provided all warranty work is completed to the satisfaction of the City Engineer.

AGREEMENTS

19. Encroachment Agreement This item was not heard and would be rescheduled to the next Council meeting.

*20. Stormwater Agreement – KB Home Authorized the City Manager to execute a Stormwater Management Facilities Operation and Maintenance Agreement for KB Home South Bay, Inc. for its new residential development at 1256 Piper Drive.

*21. Stormwater Agreement – Lennar Homes Authorized the City Manager to execute the Stormwater Management Facilities Operation and Maintenance Agreement for LMC Milpitas Holdings I, LLC and Lennar Homes of California, Inc. for its new residential development at 450 Montague Expressway.

*22. Amendment – HMH Inc. Authorized the City Manager to approve Amendment No. 2 to the Consulting Services Agreement with HMH, Inc. in the amount of \$19,700, for the Midtown Street Light and Utility Underground 2017, Projects No. 3430 and No. 3425.

REPORTS of MAYOR & COUNCILMEMBERS

Mayor Tran asked for staff to visit the lot on S. Main Street where the proposed Senior Lifestyles would be and north of it, to report back regarding safety and integrity of fences and the property.

The Mayor also gave a “shout out” to Milpitas High School Trojans on being statewide football champions. Additionally, he thanked many of the City staff for their work.

Councilmember Phan wished everyone a happy holiday and a happy new year.

ADJOURNMENT

Mayor Tran adjourned the regular City Council meeting at 12:11 AM on Wednesday, December 20, 2017.

The foregoing minutes were approved by Milpitas City Council on January 16, 2018.

Mary Lavelle
Milpitas City Clerk