

## MEETING MINUTES CITY OF MILPITAS

**Minutes of:** Joint Meeting of Milpitas City Council and the Milpitas Housing Authority  
**Date:** Tuesday, February 6, 2018  
**Time:** 6:00 PM Closed Session  
7:00 PM Open Session  
**Location:** Council Chambers, Milpitas City Hall,  
455 East Calaveras Blvd., Milpitas

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- CALL TO ORDER** Mayor Tran called the joint 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 and litigation matters, as listed on the agenda.
- City Council then convened in Open Session at 7:14 PM with all members present.
- ANNOUNCEMENT** The City Attorney stated there was no reportable action out of Closed Session. Council only discussed items (a) and (b), and so they planned to adjourn to Closed Session at conclusion of regular business.
- PLEDGE** Two members of Boy Scouts Troop No. 163 led the pledge of allegiance.
- INVOCATION** Councilmember Barbadillo offered the invocation prayer to start the meeting.
- PRESENTATIONS** Mayor Tran invited the Council to join him at the podium.
- The Mayor proclaimed Black History Month for February. He presented a proclamation to Helen Sims and representatives of Silicon Valley NAACP, including Rev. Jeff Moore.
  - Mayor Tran recognized 2017 Synopsys Silicon Valley Technology Championship and California State Science Fair winners who were students and residents of Milpitas: Yusuf Ali Atesoglu and Andrea Xinyu Liu.
  - Mayor presented a Lunar New Year commendation to the Mandarin Language and Culture Center at Milpitas High School, founded in 1992, accepted by Principal Jane Chen.
  - He commended winners of Black History Month poster contest: Adam Ben Himane, Shamir Morley, Jaden Song, Harshul Satija, Yugam Satija, Sven Morley and Tehani Lopa.
- Mayor Tran announced the Council would take a short break in the second floor lobby for a brief reception to celebrate the winners of the poster contest. The Council reconvened at 7:53 PM.
- PUBLIC FORUM** Tom Valore, Milpitas resident, had attended the budget workshop meeting the previous Saturday. He hoped that the Council would have the courage to do what residents needed to hear, not what they liked to hear. He hoped the outcome would be to hear what was needed for the community.
- Ryan Reyes, San Jose resident, manager of Speedy Oil Change business in Milpitas, said the business had been vandalized and broken into four times over the past year. He had reported this to police and just did not know what else to do. He had an 8 month old baby at home, so it was not good to get woken up in the middle of the night about crime at his business.

Councilmember Nuñez pointed out the Chief of Police to the speaker and verified that Mr. Reyes had filed police reports.

Alysson McDonald, resident, invited all to Sunnyhills Neighborhood Association along with Flamekeepers, as both were hosting breakfast on Saturday morning for Black History Month.

Jeff Moore, leader of NAACP Silicon Valley, spoke about his request for an event in Milpitas for the upcoming 50<sup>th</sup> anniversary of the MLK, Jr. assassination. He had spoken with Eric Tidwell about this event and he wanted Milpitas to be a leader in the conversation. He provided some information to the City Attorney as back-up regarding the request.

Mayor Tran said he wanted to pursue naming a street in Milpitas after Martin Luther King, Jr.

Vice Mayor Grilli noted that this item was on the agenda for action this evening.

Voltaire Montemayor, resident, felt the City was taking care of its residents on community wellness, transportation, infrastructure and other topics. He was referring to the handout from the budget session held the previous Saturday.

## **ANNOUNCEMENTS**

Interim City Manager Dianne Thompson remarked on the productive Council meeting on Saturday, February 3, identifying goals and priorities for the future budget. Also, the City had partnered with BAWSCA to host landscape workshops, with two scheduled in April and one in May at the Senior Center.

## **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.

## **CONSENT CALENDAR**

The Mayor requested Councilmembers state which items they wished to place onto the consent calendar. He requested these items for consent: 7, 8, 12, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24.

Vice Mayor Grilli asked to add items no. 1 and no. 2. She asked for one correction to the February calendar: Treatment Plant Advisory Committee start time was 4:00 PM.

Councilmember Phan wanted items no. 12 and no. 13 added to consent.

Councilmember Nuñez requested items no. 1, 2, 3, 4, and 9, and repeated the items the Mayor asked for. Mayor Tran replied he wanted to hear items no. 3, 4, and 9 (not for consent).

Motion: to approve the Consent Calendar with items on the list determined at the meeting: numbers 1, 2, 7, 8, 12, 13, and 15 - 24

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

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

## **APPROVAL OF AGENDA**

Motion: to approve the meeting agenda, as amended

Councilmember Phan wanted to move item no. 6 to be heard at a later date (off this agenda).

Mayor Tran wanted to move no. 14 to the front, heard first, due to many speakers.

Motion/Second: Councilmember Nuñez/Councilmember Barbadillo

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

Councilmember Phan asked to hear item No. 11 to be heard after No. 14.

\*1. Council Calendar

Accepted City Council calendar for February 2018.

\*2. Meeting Minutes

Approved City Council meeting minutes of January 11 and 16, 2018.

### UNFINISHED BUSINESS

3. Request of Councilmember Nuñez for Teen Programming

Councilmember Nuñez spoke about the Milpitas Unified School District and its anticipated budget shortfall for next year. Youth did not really have places to go after school or on the weekend. The City's Recreation Services had great ideas, and maybe more could be done for youth in the City, based on the former Teen Center. Maybe the City's Senior Center could be used for teen programming in the evenings for positive place for teens to go at night. He suggested finding out what it would cost the city to consider this idea.

Recreation Services Director Renee Lorentzen commented, with some history of the past Teen Center. Dual use of Senior Centers was a current trend in Recreation across the state. Programs might include homework time, trips and even cooking classes could be considered. Staff could study what additional costs would be incurred for a teen program.

Mayor Tran was supportive of finding space for youth/teens. \$2 million was too much money, so he hoped it would not cost that amount. Council needed to find out the costs and needed to be committed to youth.

Vice Mayor Grilli commented, including why the past Teen Center had closed. The number of participants does matter, and asked if there had been some evaluation of the last program so it remained interesting to teens.

Councilmember Phan felt it was a good idea to get partners involved with this concept. Maybe there could be a workforce development component for job skills/training for youth. He suggested to get big businesses involved and to attract talent.

Motion: to approve more than four hours of staff time to develop a proposal to re-establish teen programming in Milpitas that could include types of programs, locations and budget

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

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

Michael Tsai, resident, had spent some time tutoring kids in the community. There was a need for enrichment for young people in the City. He strongly agreed with the proposal by Mr. Phan, and would be happy to help with that idea for partnering with businesses.

Suraj Viswanathan, resident, said this was a great way to get kids excited in the community. Global ECS had an example program he described for students matched with companies. He suggested to work with the School Board to incentivize kids to get credits for school.

4. Councilmember Barbadillo request for a Study on Retail/ Commercial space

Councilmember Barbadillo stated his request and said it was related to the move to update the General Plan. He'd like the City to do a retail commercial study before the General Plan was updated, to learn the strength of those sources of revenue. Study results would re-define or re-frame the MidTown Specific Plan. He wanted to avoid losing vital commercial, industrial spaces with a vision, looking far ahead.

Economic Development Director Edesa Bitbadal came to the podium, stating if it was the wish of the Council, she would conduct the study. She and staff would be happy to take on the two trade areas. In Milpitas, 0.6% was the current vacancy rate (for commercial/industrial property), quite significantly low at this time.

Mayor Tran noted the City was looking for a consultant to update the MidTown Plan, so he did not want to overlap this study with that Plan update. Timing was important.

Interim City Manager Dianne Thompson asked the Planning Director to comment. Brad Misner spoke of a number of ongoing efforts and their status. The major General Plan update was under discussion. The Land Use element was one section of that, while the existing conditions report was already being prepared. A workshop was due with the Council on land use specifically to talk about issues, past and future, and that discussion was paramount.

Mr. Misner continued, reporting that on the MidTown Plan specifically, the City was out for bid for a consultant to update that plan. Land use and types of uses that would happen for that area were due for an update. The City's two Specific Plans needed adjustments, after studying. Then, strategy and coordination were necessary.

Vice Mayor Grilli commented that the Mayor made some good points. Councilmember Barbadillo had good ideas, but maybe the City did not know all the pieces yet. She urged waiting until the land use meeting took place before approving such a study. Remain concise and have the study session first.

Mayor Tran commented that maybe the retail study should be City-wide.

Councilmember Nuñez agreed with all he'd heard so far. All of the City Council was anxious to hear about these topics, which they had been mentioning for the past one year. It was time to move on these so he wanted the meeting by March to discuss land use.

City Manager Thompson commented about the coordination needed on these major land use planning documents, and the timing.

Councilmember Phan asked Ms. Bitbadal how many studies her group was asked to do. He stated further concerns about the land conversion topic and other land use matters. He spoke directly about the more urgent need for these matters to be accomplished, and his next step in calling for a public employee evaluation he wanted placed on the agenda.

Ms. Thompson responded to him, that the City Council needed to respect the role of the City Manager in personnel matters, after the City Attorney reminded the City Council that they had only direct hiring or firing responsibility for the City Manager and City Attorney.

Mayor Tran called for recess of the meeting at 10:38 PM.

The meeting later was reconvened and immediately adjourned at 10:44 PM.

No vote was taken nor direction provided on Mr. Barbadillo's request.

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| 5. Appointment to VTA PAC                  | This item was not heard.  |
| 6. Encroachment Agreement                  | This item was removed from the agenda and would be rescheduled.   |
| *7. Resolution - OpenGov                   | Adopted Resolution No. 8743 approving the sole source purchase of Open Town Hall software service from OpenGov, Inc. through November 10, 2021, for the amount of \$41,690.96 and authorizing the City Manager to execute Amendment No. 1 to the OpenGov, Inc. Software Services Agreement, subject to final approval by the City Attorney.   |
| *8. Landscape Agreement for Creighton Park | <ol style="list-style-type: none"><li>1. Approved and authorized the City Manager to execute an agreement with Bellinger Foster Steinmetz Landscape Architecture in the amount of \$217,788 for Project No. 5109, subject to approval as to form by the City Attorney and Director of Finance.</li><li>2. Approved budget appropriation of \$900,000 from the Park Fund into the construction phase of the Creighton Park Renovation Project.</li></ol> |

9. Staff report – MSI service Mayor Tran asked city staff and a Milpitas Sanitation Inc. representative to the speaker podium. From Engineering, Leslie Stobbe explained how staff had responded in the written report to Council, in reply to remarks made by the public at the Council meeting on January 16, 2018 about the new garbage and recycling service in the City.

At the podium, staff reviewed those responses, as in the written report to Council. The Mayor thanked staff.

Councilmember Nuñez thanked staff for a phone call he'd received from Milpitas Sanitation.

The City Council did receive an update report from staff with responses (to comments from the public on January 16) on garbage/recycling service provided by Milpitas Sanitation Inc. No vote was taken on this item.

10. Housing Authority Resolution

This item was not heard.

11. 3 Agreements for Senior Lifestyle Development

City Engineer Steve Erickson defined anew why this topic was brought again to request the City Council approve three development agreements for the senior housing development.

Councilmember Nuñez asked if everyone got the letter dated February 5. He would move the item at this meeting. He'd talked to the person who represented this developer to express concerns and provided history on questions raised about the development and its history. Mr. Nuñez spoke of the newspaper and what had been reported on this project. There was a lack of leadership, by the prior City Manager and past Mayor, when guidance should have been provided. More value would be added to the second parcel of the project, in the future, for senior citizens adding what the City currently lacked.

Councilmember Phan spoke, providing similar remarks to Mr. Nuñez. He believed the developer had committed to working with the current City Council on Phase II of the project.

Councilmember Barbadillo said he was the third one who had concerns about this, from the past. The City Attorney had clarified what was agreed to between the City and the developer, in terms of affordable senior units and the land provided. He provided suggestions for improvement.

Mayor Tran was in support of the project.

Motion: to reconsider, and move to approve and authorize the City Manager to execute the Subdivision Improvement Agreement, the Public Street Maintenance Agreement and the Fee Reimbursement Agreement for the Senior Assisted Living Residential development by Milpitas Phase I, LP

Motion/Second: Councilmember Nuñez/Councilmember Phan

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

## REPORTS

\*12. MLK Jr. event Approved more than four hours of staff time to develop and hold a City of Milpitas event on April 4, 2018 to commemorate the 50th anniversary of the assassination of Rev. Dr. Martin Luther King, Jr.

\*13. Report of Subcommittee on Commissions Received report of the Commission Subcommittee, and would consider new Commissioner recommendations for final appointment.

## NEW BUSINESS

#### 14. Wage Theft

This topic was heard as the first item for discussion.

Economic Development Director Edesa Bitbadal addressed the topic of wage theft, defining this practice of denying wages or employee benefits to workers, unfairly. She summarized outcomes of a report provided by the Santa Clara County Wage Theft Coalition. Ms. Bitbadal described other cities' adopted policies and defined business tax versus business license. Staff had held meetings with city staff in San Jose and San Francisco to learn more about how the policy was implemented in those cities. This topic was brought to the Economic Development Commission the previous month, and Commissioners recommended the Council adopt an ordinance to prohibit wage theft and implement fines on businesses that practice wage theft from employees.

Councilmembers asked various questions to staff on how to implement this kind of new policy, and desired to keep all businesses operating while properly paying all employees.

Councilmember Nuñez asked if staff would reach out to the School District about this policy and staff agreed.

Councilmember Barbadillo asked about the court judgments rendered against businesses in Milpitas, and staff noted there were 15 total currently in violation of state law.

Councilmember Phan asked if staff could provide the names of those business, privately, and she said yes.

Councilmember Nuñez asked if the SVO organization was involved in the conversation and staff responded yes, as well as the Chamber of Commerce, too.

Mayor Tran invited speakers from the audience.

Ruth Silver Taube spoke in favor of the policy and ordinance. She spoke favorably about the staff and work done on this policy, which was speedy and detailed. She reported that Santa Clara school district had adopted a policy for wage theft, regarding procurement.

Mr. Hui Tran, from the Wage Theft Coalition, spoke in favor of a proposed ordinance regarding wage theft. He supported the tool of business license revocation for any business that did not come into compliance.

Liz Ainsworth, resident, thanked staff for its recent presentation to the Milpitas Chamber of Commerce. She noted that a majority of businesses behave appropriately and should not be impacted by this. If enforced via business license, then this must be an important document while it was via the honor system now to have it renewed. If businesses haven't renewed it, then threatening to take it away won't yield results. Also, note that it takes courage for an employee to report the wage theft.

Allysson McDonald, resident, was excited to hear that this topic was brought to City Council at this meeting and she supported such an ordinance.

Voltaire Montemayor, resident, spoke about minimum wage increase coming, rights of the workers was their right, and he wanted small companies to be viable.

Siraj Viswanathan, resident, felt this was a great start going in the right direction. He spoke of labor classifications when fined, per the state labor department. He suggested to look into what type of fines were given by the state. Some people were getting paid under the table, and Council needed to address it too.

Evangeline Sangalang, president of Fil-Am organization, helped seniors access affordable health care at the Senior Center next door. She was here to lend support for this proposed policy on wage theft. The API (Asian Pacific Islander) and Filipino community were affected by this problem in the service sector and industries.

Maria Maldonado, a fast food organizer, spoke in favor of low wage workers who were most vulnerable, such as those who worked in restaurants. Some of these folks were brave to step forward, and they simply wanted to get paid for their work. Workers appreciate a policy like this.

A woman, a resident since 1977, said she was proud of the City Council for addressing this policy, and being progressive on the issue.

Adriana, member of the Wage Theft Coalition, said wage theft was tied to oppression of vulnerable communities such as low income workers, immigrants, older workers, etc.

Michael Tayog, representing a Filipino organization of caregivers including in Milpitas, who get paid for 8 hours of work, while often working on duty 24 hours per day. Community support was needed for these workers to file wage claims, which were often difficult to collect following judgments issued. Loopholes had been closed, but it was still hard to collect. A culture of compliance was important.

Alison Pecoli, representative of the California Restaurant Association, said thank you to Milpitas for modeling this policy after the City of San Francisco.

The Economic Development Director returned and thanked all for the comments and input.

Vice Mayor Grilli thanked the staff. It was a very good time to have this topic following the minimum wage last year, as accelerated. Proactive outreach really helped the Council to make a better decision. She asked staff to define the next steps.

Ms. Bitbadal explained that if Council wished to move forward, Milpitas would be the first small city to implement such ordinance and would become a model for others. Her staff would plan outreach to all businesses in the City by mail, following this meeting, and then start drafting an ordinance with the City Attorney. The plan was to come back end of this month or possibly early in March with the ordinance and policy. She would work with the Chamber, Restaurant Association and others to promote this topic.

Councilmember Nuñez was glad to hear from the Restaurant Association representative. When looking at the handout (other cities), he wondered if the fines revenue covered the staff costs.

Councilmember Barbadillo said this could be a great policy and hoped it would become an ordinance. It was really hard to enforce, he knew from experience. Most judgment awards were not to incentivize for workers to collect judgments. He noted immigration status had an impact too. He felt it gives unethical businesses an unfair competitive advantage.

Councilmember Phan thanked staff for all the work and the Wage Theft Coalition for reaching out. He asked the Human Resources Director if the City as an employer had any wage theft claims. Ms. Tina Murphy responded, none she'd known of. She explained time cards, bi-weekly pay and pay schedule. Mr. Phan spoke of how this policy affected his own mother and himself as a victim in the past. Wage theft was pervasive, and must do everything possible to combat it. Make sure there was procedural due process for businesses, before enacting any ordinance.

Mayor Tran said the Council could move forward to direct staff on the draft ordinance.

City Attorney Chris Diaz reported he was already drafting an ordinance, and would need to look at how other cities approached implementation of their ordinances and policies.

- \*15. Financial Status report      Received the financial status report for six months ended December 31, 2017.
- \*16. Investment Portfolio      Received the investment report for the quarter ended December 31, 2017.
- \*17. COPS Grant      Accepted the 2018 Citizen Options for Public Safety (COPS) Grant in the amount of \$115,378 and approved a budget appropriation for the same amount into the Milpitas Police Department's operating budget.

## RESOLUTIONS

- \*18. Resolution – Great Mall settlement  
Adopted Resolution No. 8744 authorizing the write-off of \$931,582.03 relating to Settlement Agreement and Mutual Release with Milpitas Mills Limited Partnership, doing business as The Great Mall, Successor in Interest to Great Mall of Bay Area Associates, LP, and Conditional Use Permit No. 1177.18, Condition No. 4 - Cost Reimbursement.
- \*19. Resolution – Grant Funding Application  
Adopted Resolution No. 8745 to authorize submittal of an application for funding a \$100,000 grant to the Santa Clara Valley Open Space Authority’s Measure Q Urban Open Space Grant Program for McCandless Park Project No. 5102, authorized appropriation of the funds when received; and authorized the City Manager to conduct all negotiations and submit and sign all documents which may be necessary.
- \*20. Resolution – Marylinn Drive Sewer Rehab  
Adopted Resolution No. 8746 awarding a contract including two add alternate items to Southwest Pipelines & Trenchless Corp. as the lowest responsible bidder submitting a responsive bid for the project in the amount of \$970,906. Authorized City Engineer to execute contract change orders for the Marylinn Drive Sanitary Sewer Rehabilitation, Projects No. 6115 and No. 6116 in an aggregate amount not to exceed the construction contingency of \$145,635.

## AGREEMENTS

- \*21. Midtown Street Lights  
Approved project plans and specifications, and authorized advertisement for bid proposals for the Midtown Street Light Project No. 3430, for Main Street, Milpitas.
- \*22. Asian Meals Contract  
Approved the contract and authorized the City Manager to execute a contract with MoonChef, LLC to provide to provide preparation and delivery of Asian style meals for seniors at the Milpitas Senior Center. Authorized the Purchasing Agent to extend the term of the contract annually for each of the four option years with annual price increase, per the terms of the contract, and without further City Council action, except for the appropriation of funds.
- \*23. Cost Share Agreement with MUSD  
Authorized the City Manager to execute the Cost-Share Agreement between the City and the Milpitas Unified School District for Phase One Mabel Mattos Elementary School Joint Use Areas and McCandless Park Improvements.
- \*24. Grant for Recycling  
Approved receipt of the CalRecycle Grant and appropriated funding to the Engineering Department operating budget, in the amount of \$19,074 for Fiscal Year 2017-18.

## ADJOURNMENT

Mayor Tran adjourned the meeting at 10:44 PM.

**The foregoing minutes were approved by Milpitas City Council on February 20, 2018.**

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