

## MEETING MINUTES CITY OF MILPITAS

**Minutes of:** Meeting of Milpitas City Council  
**Date:** Tuesday, March 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 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 litigation matters, as listed on the agenda. City Attorney Chris Diaz said Mayor Tran excused himself from items c - e on Closed Session agenda.

City Council then convened in Open Session at 7:00 PM with all members present.

### ANNOUNCEMENT

Mayor Tran proudly introduced the new City Manager Julie Edmonds-Mares, and a warm round of applause was heard welcoming her to the City of Milpitas.

The City Attorney stated there was no reportable action out of Closed Session.

### PLEDGE

Boy Scouts Troop No. 92 presented flags and led the pledge of allegiance.

### INVOCATION

Councilmember Nuñez read a message regarding “we meet to serve” aloud and offered words to start the meeting.

### PRESENTATIONS

Mayor Tran presented the following:

- Proclaimed March 2018 as *Arts Education Month*, accepted by Eileen Beckley from Santa Clara County Office of Education, Visual and Performing Arts Department.
- Proclaimed the week of March 12, 2018 as *Science Fair Week* accepted by Forrest Williams of the Santa Clara Valley Science and Engineering Fair Association.
- City Clerk Mary Lavelle provided the Oath of Office to new City Manager Julie Edmonds-Mares in front of the City Council, staff, residents and members of her family.

The City Council took a break to enjoy refreshments in the City Hall lobby.

### PUBLIC FORUM

Rob Means, 1421 Yellowstone Ave. resident, was pleased with the new recycling, happy with Silicon Valley Clean Energy rollout, and was quite hopeful for the future of the City.

Voltaire Montemayor, resident, said we are revitalized. He emphasized that art and science were good together.

Tom Valore, 670 Cardiff Place resident, spoke of people seriously injured, stating enough is enough, and he did not have a solution, while the community could take the lead with City Council by doing something about guns, which were a problem.

Councilmember Nuñez thanked Mr. Valore for bringing up that issue. He would like to put it on the agenda and on the School District-City Council meeting agenda. All should be talking about and seeing what the group could do, before something happened.

Joseph Weinstein, resident, said City employees should enjoy respect, not commented on by City Councilmembers, who must go through the City Manager. There should be no abuse or harassment or intimidation of staff. So, he sought an apology by Councilmember Phan for an incident over one month ago toward the Planning Director. City Council cannot direct staff.

Mayor Tran called a recess at 7:54 PM. Councilmember Phan addressed the speaker tersely as he left the speaker podium. At 8:01 PM, the meeting continued.

Mr. Weinstein returned to the podium to speak. There should be opposition against any official who bullied or opposed City staff. Mr. Phan should apologize and should resign, if not.

## **ANNOUNCEMENTS**

None

## **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.

Vice Mayor Grilli would recuse herself on the public hearing due to a family personal relationship with property owner. Councilmember Barbadillo would also, due to his law office location.

## **APPROVAL OF AGENDA**

Motion: to approve the meeting agenda, as submitted

Mayor Tran requested to move agenda item no. 10, to be heard after the public hearing (no. 3).

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

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

## **CONSENT CALENDAR**

The Mayor requested Councilmembers state which items they wished to place onto the consent calendar. Mayor Tran requested agenda items no. 8, 9, 11, 12, 13 and 14 for consent.

Vice Mayor Grilli asked to add items no. 1 and no. 2.

Councilmember Nuñez wanted discussion on items no. 8 and no. 9 (off consent).

Motion: to approve the Consent Calendar with items determined at the meeting: agenda items numbered 1, 2, 11, 12, 13 and 14

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

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

\*1. Council Calendar

Accepted City Council calendar for March 2018.

\*2. Meeting Minutes

Approved City Council meeting minutes of February 20, 2018.

## **PUBLIC HEARING**

**3.** Appeal – Grocery at 380 South Main Street

Planning Director Brad Misner introduced planner Adrienne Smith, who described the project that had been appealed to City Council for consideration of the Planning Commission's approval of a Conditional Use Permit for a grocery store in an existing commercial building at 380 S. Main Street. An appeal was filed on the day following that approval vote. She reviewed details of the proposed store, and the conditions of approval required for the ethnic grocery store. Staff reported public comments received on the project, prior to the Planning Commission meeting, mostly regarding parking concerns.

City Attorney Diaz commented on the unusual nature of the appeal, since it was appealed by a Councilmember (not a project opponent, e.g.). The applicant could be invited to speak first, then hold the public hearing. Three affirmative votes would be needed to adopt a resolution (while two Councilmembers were sitting out).

Karl Shultz, project architect for the project came up to the podium with the applicant Sajeev K. Veedu. They were available to answer any questions.

Mayor Tran opened the public hearing for comments.

Rob Means, 1421 Yellowstone resident, spoke in favor of the project and the store.

Voltaire Montemayor, resident, spoke of profit being justifiable, and to buy merchandise not available at Great Mall.

Chris Balster, longtime resident of Milpitas, spoke on behalf of the building's owner (his family) and his family was surprised at the appeal of this application. The store was approved by the Planning Commission and the tenant was responsible. He spoke of the benefits of the applicant and store that would fill in a vacant storefront.

Don Peoples, property owner on South Main Street, felt it was good when people wanted to invest money in local businesses. The City needed to have some new energy and upgrades on Main Street. He was glad to hear there would be outdoor dining and glad to hear of investment at this site, and spoke in favor.

Allysson McDonald, resident, expressed support for the project, despite some stated concerns about traffic. A local grocery store would likely help local residents drive fewer miles to buy the goods they needed, and it provided a service.

Motion: to close the public hearing, following five speakers

Motion/Second: Councilmember Nuñez/Councilmember Phan

Motion carried by a vote of: AYES: 3  
NOES: 0  
ABSENT: 2 (Barbadillo, Grilli)

City Attorney Chris Diaz asked for disclosure of ex parte communication by City Council.

Councilmembers Phan and Nuñez stated they had none.

Mayor Tran said he went to 7<sup>th</sup> grade with one speaker (Mr. Balster).

Councilmember Nuñez had more questions about process, rather than the benefits of the business. He asked about rules for approval of Conditional Use Permits. Mr. Nuñez asked if the Planning Commission was subject to the same question the Council was asked about possible conflict of interest. Staff responded to his additional various questions.

Mayor Tran thanked staff for all the information and was in favor of the business coming to Milpitas on Main Street. Products the owner would offer in the store were in demand.

Councilmember Phan thanked Planning staff for working on this project and for bringing the report at this meeting. He was in favor of the project and the store.

Motion: to adopt Resolution No. 8751 to deny the appeal and approving the project as approved by the Planning Commission for Conditional Use Permit No. UP17-0017 to allow a 2,904 square foot grocery store within an existing commercial building at 380 S Main Street in the Midtown Specific Plan Area

Motion/Second:

Mayor Tran/Councilmember Phan

Motion carried by a vote of:

AYES: 3

NOES: 0

ABSENT: 2 (Barbadillo, Grilli)

## UNFINISHED BUSINESS

### 4. Request for a Study on Retail

Councilmember Barbadillo expressed his reason for requesting a study on retail and commercial space in the MidTown and Transit Area in the City. He wanted the Economic Development office to work on the study.

Mayor Tran spoke in favor of Mr. Barbadillo's request.

Councilmember Nuñez was confused about agenda items numbers 4, 5, and 6. He did not agree these should be placed on consent. He wanted to hear how this impacted the General Plan study that was in place. He heard from staff about another study in MidTown. On no. 6 (housing issue), he saw all these as needing to be done. He found it troublesome that there would be duplicating efforts. He understood this would go to City Manager who would decide who does the study.

City Manager Edmonds-Mares appreciated the request and she could evaluate all these requests, while staff was working on the General Plan and MidTown Specific Plan updates. Staff would evaluate what was under way, and determine if there was any duplication of effort. She could get back to Council on all the plans and studies.

Vice Mayor Grill agreed with her colleagues. She agreed with Mr. Barbadillo's requests for the information needed at City Council level. She also agreed with giving the concepts to the City Manager to analyze and get a timeline returned to Council on these important topics.

Councilmember Barbadillo said whatever was learned from this study in the two areas could then be incorporated into the General Plan.

Councilmember Nuñez asked the City Manager how long it would take to bring something back to Council on the General Plan, MidTown Plan, TASP, Town Center area, Affordable Housing, etc. Ms. Edmonds-Mares said, with flexibility, in the next 2 – 4 weeks. Mr. Nuñez spoke of his felt urgency on these topical issues.

Mayor Tran next invited comment from audience.

Tom Valore, resident, commented on the General Plan, said the Council can't avoid it so make it something of value, then determine the hierarchy of plans in City.

Don Peoples, property owner on Main Street, did not agree with Mr. Barbadillo's premise, but believed his concern about not having enough commercial in downtown. He spoke of a legitimate process on crafting the MidTown Plan, starting 19 years ago.

Voltaire Montemayor, resident, addressed the Council in support.

Mr. Nuñez said he would move agenda items no. 4, no. 5 and no. 6 to the April 3 Council agenda, as written on this agenda. He encouraged staff to then bring back reports on other studies as related.

Vice Mayor Grilli heard that taking these recommendations to City Manager as written, to analyze, and come back to tell Council if a study would be needed further. She said to determine what was done and what was not being done, and let the City Manager come back with recommendation on a study needed or other action.

Councilmember Barbadillo was okay with the suggestion if he could give the City Manager some brief input.

No vote was taken on this item.

**5. Main Street – Commercial Zoning**

Councilmember Barbadillo referred to a period when some of the Town Center was zoned mixed use. Then, an item came to Council to utilize unused commercial space for residential use. He opposed that and requested purely commercial zoning in the Town Center. There needed to be a balance in the City with sources of revenue from businesses and fees.

His intent on this item would be to duplicate the same action as what he brought forward in the Town Center, with a proposal to keep Main Street zoned for commercial uses, not residential.

Mayor Tran said he liked what he heard, and would like the staff to conduct the important study and then listen to staff on those results.

Councilmember Nuñez was not opposed to agenda items no. 4, no. 5 and 6, but felt these had already been asked. He needed a whole lot of discussion on these and how they'd impact studies already taking place. He looked forward to hearing back from the City Manager.

Councilmember Barbadillo commented a bit on the next item (affordable housing) and said Council should take steps to make housing a little bit more affordable. He reported some facts he had researched, on accessory dwelling units and other options.

**REPORTS of OFFICERS**

**6. Affordable Housing Options**

Councilmember Barbadillo addressed the need, where he wanted to ask Council to consider ways to use existing land or spaces, for additional housing in the City. For example, the city could allow more accessory dwelling units or garage conversion. His goal was to preserve and expand affordable housing here. Hasten the implementation of new state laws on housing and possibly offer rental assistance.

Councilmember Nuñez thanked his colleague for research and the comments he'd made, and getting to some of the things the City Council could do at this time.

Councilmember Phan thanked Mr. Barbadillo for his presentations at this meeting. He was open to allowing the two requests for four hours of staff time. On Main St. to be commercial, he was of different opinion on how to approach long term development. It should be market driven by supply, he felt, and they should have a more in-depth discussion later on.

Motion: to send agenda items no. 4, no. 5, and no. 6 to the City Manager for her analysis, and to come back with what she finds the City Council would need to do to move forward

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

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

**7. Support Letter to City of San Jose**

Councilmember Nuñez said he'd talked to San Jose City Councilmembers of a ballot measure in that city, where developers were looking to put senior housing at Evergreen. There was opposition, where it would supersede current regulations. He felt Milpitas should study and take a position on this, due to what could happen in Milpitas.

The City Manager reported that San Jose City Council was taking up this matter on its agenda on this date. There were two issues, actions on a petition initiative and potential for a June 5 ballot measure request. Milpitas could monitor what occurred there and come back in the future on whether to weigh in or not.

Councilmember Barbadillo urged that, instead of writing a letter, the Council adopt a resolution.

Motion: to hear request of Councilmember Nuñez, allow the City Manager to analyze the request for City Council acting in support of City of San Jose City Council's opposition to a proposed land use ballot measure regarding Evergreen Senior Housing and return to Council with her recommendation

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

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

## NEW BUSINESS

### 8. EVOG Training Funding

Police Chief Armando Corpuz described the need for Police Department training every 24 months, on low and high speed driving skills. The department did not have a location for this in Milpitas, so the request was for funds to go to the location for this required training.

Councilmember Nuñez asked for more detail on the funding, and the way in which the City would get reimbursed by POST later. The Police Chief responded with more information.

Mayor Tran invited a comment from the audience.

Voltaire Montemayor, resident, said the reimbursement should be covered.

Motion: to approve the budget appropriation in the amount of \$18,392 for Emergency Vehicle Operations Course (EVOG) training into the Police Department's Operating Budget

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

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

### 9. Letter to BAAQMD

City Engineer Steve Erickson discussed the letter staff drafted to the Bay Area Air Quality Management District to oppose a permit to allow a height increase at the Newby Island landfill nearby. Staff sought approval to send the letter from the City to the District.

Mayor Tran asked what authority the District had to approve the landfill height expansion.

Mr. Erickson replied that it had permit authority and he commented further on the timeline for review and potential permit issuance.

Councilmember Nuñez asked the City Attorney if he had reviewed the ability of District to be able to issue the permit.

City Attorney Diaz commented and responded to Mr. Nuñez, explaining that LEA was the Local Enforcement Agency (City of San Jose, in this case). CalRecycle was a state agency that permits local landfill-dump site. BAAQMD was on composting and recyclery. If authorized at this meeting, he could get Steve Erickson to look at what's authorized, such as height of landfill or composting, in order to send a letter.

Councilmember Nuñez needed to be fully informed on what he'd be voting on, permitting what action, with more explanation on the authority of District.

The City Attorney replied that the Council could direct staff to study further and come back.

Mayor Tran referred to the draft letter language, in the last paragraph. With opposition to the permit, he was in support of an odor nuisance reduction. There was a need for a more defined letter of opposition, he said.

Vice Mayor Grilli read the staff report and asked about the time frame for comments to be received.

Mayor Tran wanted to learn what other cities were doing, on such a letter.

Councilmember Barbadillo referred to violations of odor reported to BAAQMD. He sought to understand what the agency would do when opposition was stated, since there was not much in the past.

Councilmember Phan was confused a bit. He knew the District had authority on something, on the permit for the recycling building. He thought this matter related to the vertical expansion of the recycling building specifically.

Councilmember Nuñez asked staff to gather more information and come back on this topic. When bringing it back, do so at the right time.

No vote was taken on this item.

## **ORDINANCE**

### **10. Introduce Wage Theft Ordinance No. 295**

Economic Development Director Edesa Bitbadal explained the definition of wage theft and reviewed the rationale for the proposed ordinance, which the City Council had requested at its meeting on February 6. She listed Steps 1 – 6 on how this new regulation would be implemented in Milpitas. She also responded to prior comments and concerns stated by City Councilmembers in February. While the City Council also anticipated additionally a procurement policy related to wage theft, City staff would bring that back at a future meeting for consideration.

Councilmember Nuñez asked staff questions, and noted that some companies were asking for certain visas for workers (at Tesla and other companies).

Vice Mayor Grilli asked about wages and rates of pay for some types of construction work.

Mayor Tran asked about being the first city in the county to adopt this kind of ordinance on wage theft. Ms. Bitbadal confirmed this and explained further why this Milpitas policy and ordinance would be precedent setting.

The Mayor next invited public comments.

Ruth Silver Taube, of the Santa Clara County Wage Theft Coalition, spoke in support of the ordinance. She thanked the pro-active staff for their great work on this topic, which was very impressive. She also described the L-1 visa process, as one Councilmember had asked about.

Huy Tran, of the Wage Theft Coalition, appreciated the staff working very hard on this ordinance. This could be a great model for other cities in Silicon Valley.

Alison Piccoli, representing the California Restaurant Association, thanked the City Council for work on this issue.

Allysson McDonald, resident, thanked the City Council and staff for considering this excellent issue and proposed ordinance. Milpitas had a history of economic diversity as an inclusive city.

Daisly Pease, 294 Barker Drive resident, spoke in favor and saluted the City Council for moving on with this issue. She was a member of Wage Theft Coalition (9 to 5 group).

Semeena Usman, of Santa Clara and member of the Wage Theft Coalition, thanked the City Council for bringing this ordinance forward, as a matter of civil rights. It was good for employees and good for business.

Voltaire Montemayor, resident, read from his written remarks, on wage theft topic.

Jeffrey Buchanan, Working Partnerships USA, supported this ordinance and thanked the City Council for its work on the ordinance, with the chance to be a leader on this policy.

Rob Means, 1421 Yellowstone, thanked the City for a team effort, and Councilmember Phan for getting the ball rolling on the subject.

Don Peoples, business owner, agreed this was a moral issue and business owners needed to be responsible. He did not support the ordinance but rather other methods to enforce correct payment of wages. He discussed occupancy permit versus business license, and when those were issued by the City.

Tom Valore, resident, was a Board member of the Chamber of Commerce, which voted in favor of the concept to support enforcement on wage theft judgments. He felt the enforcement of this issue by Economic Development staff was inappropriate in terms of that office's function.

Economic Development Director Ms. Bitbadal and the City Attorney responded to several of the public comments.

Vice Mayor Grilli thanked Councilmember Phan for bringing this issue forward to her and the Council. It fell into line with other policies of the Council, such as increased minimum wage.

Councilmember Phan thanked staff for working on this policy for the past year, and thanked the Wage Theft Coalition for its advocacy and bringing to Council's attention. The new ordinance would help working families. He felt this City was becoming a "progressive" city.

City Attorney Chris Diaz read aloud of the title of Ordinance No. 295, "An Ordinance of the City Council of the City of Milpitas Amending Sections III-1-7.01, III-1-8.01, III-1-10.04 and III-1-14.01 of Chapter 1 of Title III of the Milpitas Municipal Code Relating to Denial, Suspension or Revocation of City Business Licenses for Wage Theft and Other Violations of Law and Updating Administrative Appeal and Hearing Procedures for Business Licenses."

Motion: to waive the first reading beyond the title of Ordinance No. 295 and to introduce the ordinance

Motion/Second: Vice Mayor Grilli/Councilmember Phan

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

## RESOLUTIONS

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| *11. Resolution Authorizing Grant Agreement | 1. Adopted Resolution No. 8752 authorizing the City Manager to execute a grant agreement with Santa Clara County for the Alviso Adobe, Phase 5 Interior Restoration, Project No. 5055.<br>2. Approved a budget appropriation in an estimated amount of \$62,958 for the Alviso Adobe, Phase 5 Interior Restoration Project. |
| *12. Resolution – LLMD No. 98-1             | Adopted Resolution No. 8753 initiating proceedings and directing preparation of the Annual Engineer's Report for LLMD No. 98-1 at Sinclair Horizon.   |
| *13. Resolution – LLMD No. 95-1             | Adopted Resolution No. 8754 initiating proceedings and directing preparation of the Annual Engineer's Report for LLMD No. 95-1 at McCarthy Ranch.   |
| *14. Resolution – Fly Vietnamese Flag       | Adopted Resolution No. 8755 directing staff to fly the Vietnamese Heritage and Freedom Flag on April 30, 2018 in the Cesar Chavez Plaza and approve more than 4 hours of staff time to host a flag raising ceremony.  |

**REPORT**

Mayor Tran announced that Little League Opening Day was scheduled the following Saturday, March 10, at City playing fields.

**ADJOURNMENT**

Mayor Tran adjourned the Council meeting at 11:14 PM.

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

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