

**MEETING MINUTES  
CITY OF MILPITAS**

**Minutes of:** Regular Meeting of Milpitas City Council  
**Date:** Tuesday, November 20, 2018  
**Time:** 6:30 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 6:30 PM. City Clerk Mary Lavelle called the roll.

**PRESENT:** Mayor Tran, Vice Mayor Grilli and Councilmembers Barbadillo, Nuñez and Phan

**ABSENT:** None

BB&K Attorney Seth Merewitz was present at the dais in place of City Attorney Chris Diaz.

**CLOSED SESSION**

City Council convened in Closed Session to discuss one employee/labor matter on the agenda.

**ANNOUNCEMENT**

City Attorney Seth Merewitz reported that direction was given by the City Council to authorize the City Manager to enter into a side letter concerning holiday closures with three employee unions: MEA, MidCon and ProTech.

City Council then convened at the dais for the Open Session regular agenda at 7:05 PM.

**PLEDGE**

Members of local Girl Scouts Troops presented the flags and led the pledge of allegiance.

**INVOCATION**

Mayor Tran invited his pastor from Christian Worship Center Nick Volasky to provide the invocation prayer.

**PRESENTATION**

Mayor Tran presented certificates to recent graduates of the Fire Department's CERT program.

**PUBLIC FORUM**

Ha Phan, Milpitas resident of 30 years, opposed a Vietnamese Communist singer scheduled to appear at the India Community Center on an upcoming date. She referred to a City Council Resolution adopted in 2013, with a requirement to notify the police department of the arrival in the City of any communist visitor from Vietnam. She spoke of democracy and human rights.

Van Lan Truong, resident and Community Advisory Commission member, was in support of the Vietnamese community request to apply the adopted Resolution No. 8236 from 2013, regarding a current Vietnamese communist singer, scheduled to perform at the ICC on December 2.

Councilmember Nuñez asked staff to look up that resolution and report back to City Council.

Rob Means, resident at 1421 Yellowstone, referred to recent deadly wildfires and climate change.

Tom Valore, resident, attended a meeting regarding the General Plan and MidTown Plan update, on the same date as a School Board meeting, a schedule conflict. He was concerned to learn that the Transit Area Specific Plan and MidTown Plan were "carved out" of the General Plan. He felt these should be all together in planning.

Joseph Weinstein, Hamilton Ave. resident, admired the Mayor on his desire for transparency. He mentioned a lawsuit and he had asked for the Amy Oppenheimer report, but the City Attorney denied it based on "attorney client" privilege. He believed residents had a right to know the

contents of that report. Mr. Weinstein asked the Council to overrule the City Attorney to get that report out to the public.

Nathan Tuttle from Lyon Developers for The District (project developer) asked the Mayor if he would pull agenda item no. 18 from the consent calendar.

Robert Marini, resident, wanted to address item no. 20 regarding a requested amendment.

Voltaire Montemayor, resident, was concerned about the City's ability to put out fires. Trees could burn down, followed with floods which hurt the city.

A man from Fremont, neighbor with Milpitas, asked to have a sales ban on marijuana.

A man asked if they could have the most important item (No. 20 regarding marijuana regulation) heard first.

## **ANNOUNCEMENTS**

Councilmember Phan stated that he would recuse himself from the item related to cannabis on the agenda, following allegations of a conflict of interest. He needed to be consistent with the law and was seeking a letter of advice from the state Fair Political Practices Commission. Out of an abundance of caution, he said he would recuse himself on that agenda item.

## **ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**

The City Attorney 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 submitted

City Manager Julie Edmonds-Mares made a request from staff to defer item no. 18 to a future meeting. However, Mayor Tran responded that due to the speaker request, that item would be pulled from consent.

Motion/Second: Vice Mayor Grilli/Councilmember Barbadillo

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

## **CONSENT CALENDAR**

Vice Mayor Grilli requested to remove item no. 5 (grant to canine program) and the Mayor wanted to remove item no. 8 (ordinance for zoning on Main St.) to vote separately on that one.

Motion: to approve the Consent Calendar including agenda items numbered 1 – 19, excepting items no. 5, no. 8 and no. 18

Motion/Second: Vice Mayor Grilli/Councilmember Barbadillo

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

- \* 1. Council Calendars Accepted City Council calendars for November and December 2018.
- \* 2. Meeting Minutes Approved City Council meeting minutes of October 16 and 23, 2018.
- \* 3. Donate Engine No. 42 to Non-profit for use in Mexico Authorized the Purchasing Agent to dispose of surplus fire pumper engine No. 42 for \$1.00 to the Palo Alto Neighbors Abroad non-profit organization for donation to Oaxaca, Mexico.
- \* 4. Bulletproof Vest Partnership Grant Accepted the 2018 Bulletproof Vest Partnership (BVP) grant and approved a budget amendment to appropriate \$13,309.73 into the Police Department's operating budget.

5. Grant to Canine Fund

Police Captain Kevin Moscuza explained the grant that was awarded from the Nuñez Community Foundation’s Molly Ann Brown Fund towards training the canines for Milpitas Police officers.

Ms. Jil Kaufmann Nuñez came forward to express her and the Foundation’s support for the K9 unit and for the training required for canine officers. They were very pleased to provide this resource to the community through the Nuñez Foundation. Police, she and the foundation looked forward to a long productive relationship.

Motion: to accept the Molly Ann Brown Fund Canine Unit donation from the Nuñez Community Foundation in the amount of \$5,000 to be used for training of a Police Department police service dog and handler; and, to approve a budget amendment to appropriate \$5,000 to the Police Department’s FY 2018-19 operating budget

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

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

\* 6. Replacement UPS

1. Received a report from the Public Works Director on the emergency repair and replacement of the uninterruptable power supply unit at the Police Department/Public Works building.
2. Authorized staff to pay invoices in the amount of \$242,738.08, including a contingency amount of \$24,273.81 (10%), for a total amount of \$267,011.89.

\* 7. Emergency Road Repair of California Circle

1. Received a report from the Public Works Director on the emergency repair of the water main on California Circle.
2. Approved a budget appropriation from the Water Fund to the Public Works Utility Maintenance operating budget in the amount of \$113,812.44.
3. Authorized staff to pay invoices of \$113,812.44 to Joseph J. Albanese, Inc.

8. Adopt Ordinance No. 38.831

Mayor Tran had removed this from consent for a vote. He invited comment from the audience.

Voltaire Montemayor, resident, said the presentation last time was great so he favored this.

Michael Tsai, resident, encouraged City Council to support this housing in Milpitas, where the community needed high density housing near transit, which this project would provide.

Motion: to waive the second reading and adopt Ordinance No. 38.381 amending the City of Milpitas Zoning Map, as described per Milpitas Municipal Code XI-10-3.03, related to properties at 1380 and 1400 South Main Street.

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

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

\* 9. Resolution - Orchid

Adopted Resolution No. 8824 granting final acceptance of public improvements for the Orchid Subdivision project at 31 Los Coches Street, Tract No. 10192, Public Improvement Plan No. 2-1180 and release of remaining faithful performance security.

\*10. Resolution – The District 2, 1315-1600 McCandless

1. Adopted Resolution No. 8825 granting acceptance of public improvements for The District 2 Subdivision at 1315 – 1600 McCandless Drive, Tracts No. 10141, 10145, 10148 and 10149, Public Improvement Plan No. 2-1165 and approved reduction in the performance bond, subject to a one-year warranty period, to \$330,000 which shall be in effect for the duration of the warranty period.
2. Granted authorization to the City Engineer to release the performance bond after the one-year warranty period, without further City Council action provided all required warranty work is completed to the satisfaction of the City Engineer.

- \*11. Resolution – Marylinn Drive Sewer Rehab. Project      Adopted Resolution No. 8826 granting acceptance of the Marylinn Drive Sanitary Sewer Rehabilitation, Projects No. 6115 and No. 6116, and granting authorization to the City Engineer to issue the notice of final acceptance after the one-year warranty period without further City Council action.
- \*12. Resolution – PLAN JPA      Adopted Resolution No. 8827 appointing the Director of Financial Services as a Board Member and the Budget Manager as Alternate Board Member to the Pooled Liability Assurance Network Joint Powers Authority (PLAN JPA) Board of Directors.
- \*13. Stormwater O&M Agreement for Centre Pointe      Authorized the City Manager to execute a Stormwater Management Facilities Operation and Maintenance Agreement for D.R. Horton CA3, Inc. for its new residential development at 1515, 1557 and 1585 Centre Pointe Drive.
- \*14. Agreement with MIG for Carlo Park Design      Approved and authorized the City Manager to execute a Design Services Agreement with MIG Inc. in the amount not to exceed \$199,780 for the Carlo Park Project No. 5112, subject to any changes deemed legally necessary by the City Attorney.
- \*15. Agreement with CSG for Design of Street Project 2019      Authorized the City Manager to execute a Design Services Agreement with CSG Consultants, Inc. in an amount not to exceed \$346,544 for design and construction support services for the 2019 Street Resurfacing Project, CIP No. 4291.
- \*16. Agreement with IBI      1. Approved the updated conceptual design for McCandless Park, Project No. 5102.  
2. Authorized the City Manager to execute Amendment No. 2 to the Agreement with IBI Group Architecture Planning to extend the term and increase the contract amount by not to exceed \$69,040 for additional design services for McCandless Park, Project No. 5102.
- \*17. Stormwater O&M Agreement for 260 N. Main St.      Authorized the City Manager to execute a Stormwater Management Facilities Operation and Maintenance Agreement with Eastside San Ramon Partners, LLC for a new mixed use development at 260 South Main Street in the MidTown Specific Plan area.
- 18. Amendment to SIA – The District Lot 1**      This item was removed from consent.

Mr. Nathan Tuttle from Lyon Living (developer) for The District 1 project in the Transit Area came forward to discuss the requested change in the adopted Subdivision Improvement Agreement. The company was prevented from occupying residential units until there was a signed grocery store lease, as in the adopted Subdivision Improvement Agreement for the first phase of this major development in the TASP area. Company representatives stated they wanted to move this along and be authorized to occupy residential units, despite the challenge with obtaining a lease for a grocery store.

Attorney Merewitz noted that staff requested to postpone this item to the next agenda, however, the developer wanted to move ahead at this meeting to seek occupancy of the building.

City Manager Julie Edmonds-Mares commented on why deferral was requested.

Councilmember Nuñez asked a variety of questions about this situation and Deputy City Manager Steve McHarris responded with additional background.

The City Manager offered a possible way to take action: to move the condition to the SIA for The District 2, and then Lyon could move forward with occupancy for Lot 1, as currently desired.

Councilmember Phan referred to the memo, from himself and Councilmember Nuñez. Both would like city to work with Lyon to get this moving ahead, as in their written memo.

Mayor Tran recommended to defer this whole matter to a meeting the following week.

Councilmember Nuñez asked the City Manager about a process she'd outlined. He wanted to take up that proposal, to move ahead while bringing the documents back to Council at the next

City Council meeting (special or regular). Ms. Edmonds-Mares thus urged the Council to direct staff to bring back the amendment at next City Council meeting.

Mr. McHarris specified that developer Lyon needed approval to occupy 36 units, which was 15 over the maximum allowed (at 50% occupancy of the project).

Councilmember Nuñez wished to take this up as the City Manager proposed, so he recommended direction given to staff to bring this matter back at the next meeting on consent. It would include the condition on Lot 2, so the developer could occupy units as requested (15 over the current cap) and allow The District 1 to lease units. He made this a motion.

Councilmember Barbadillo asked to confirm with the City Attorney if the motion was proper. Mr. Merewitz asked for a slight variation: the agreement be amended so that the requirement not say 15%, but rather for the allowed maximum number plus 15 units for The District-Lot 1, to amend the agreement, with the condition still in there, and then next, to bring back to City Council moving the condition to the SIA for The District-Lot 2 (for the grocery market lease).

Motion: to direct staff to affirm an amendment to the Subdivision Improvement Agreement for The District Lot 1 to have the agreement be amended so that the requirements allow the maximum number of units plus 15 units to be occupied presently for Lot 1 (which amends the agreement, with the condition still in there), and subsequently to bring back moving of the condition in the Subdivision Improvement Agreement for The District Lot 2 (for the required grocery market lease)

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

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

\*19. Direct Study for Digital Off-Site Electronic Billboards

Directed the City Manager to conduct a study of potential locations and regulations for digital off-site advertising (electronic billboards) across the City and re-evaluate the current billboard application at the conclusion of the study.

## **PUBLIC HEARING**

**20.** Consideration of Ordinances related to Marijuana Regulation

Councilmember Phan left the dais and the meeting prior to the start of this item.

Assistant City Manager Ashwini Kantak presented information and history regarding marijuana ordinances adopted in the past for moratorium, and need for regulation in the City on this subject. She defined the types of marijuana businesses proposed for specific zoning districts with “buffer zones” toward sensitive uses.

Mayor Tran next opened the public hearing for comments. Hundreds of people were in attendance at City Hall in the full Council Chambers, in the second floor lobby and in the first floor Committee room. The Mayor limited speakers to a maximum of one minute each.

Over several hours, 101 people addressed the City Council during the public hearing, with 11 speaking in favor of marijuana regulation by ordinance and 90 speakers against having such businesses or products available in the City. The majority of speakers, though not all, stated that they were residents of Milpitas.

Vice Mayor Grilli moved to close the public hearing, seconded by Councilmember Nuñez, and the motion was approved with four in favor.

City Attorney Seth Merewitz gave some history of the existing moratorium on marijuana/cannabis businesses in Milpitas. The Council had exhausted the possibly to extend that law, since there had been two extensions of the original one already.

Mayor Tran asked what the options were, if Council did not vote on the regulations brought forward by staff in the proposed ordinances.

Mr. Merewitz said the City Council could adopt ordinances as proposed, could make modifications to the staff prepared ordinances, and had the ability to reject or deny an ordinance. If rejected, without any other direction, the City risked the opportunity that there would be no regulation on the books and then marijuana could be allowed in any retail zone. Something would need to be effective before January 17, 2019 date (when the current moratorium expired) to combat that.

Also, a permanent ban via an urgency ordinance could be considered. That would need to go to Planning Commission first, at a public hearing. This would need to be followed by a regular ordinance with a first and second reading, before adoption by the City Council, and it would then be effective 30 days after adoption.

Councilmember Nuñez thanked all the speakers who came to the meeting. He asked if the Council needed to deal with delivery in the City. BBK Attorney Amanda Charne responded by referring to state regulation that was not in effect yet, on regulation of deliveries. Mr. Nunez wanted to know more about a process to notify the community. Following all the speakers, he was not in favor of a permanent moratorium by ordinance, and include dealing with delivery. Council needed to find a way to better inform the community on an issue like this.

Councilmember Barbadillo thanked the City Attorney for an alternative for a possible permanent ban to replace the moratorium that would expire in January. He gave some past history and spoke about formation of the Subcommittee. He asked for staff response to his comments.

Vice Mayor Grilli commented on buffer zones. She noted that a possible cannabis tax did not get on the ballot, it was not that “it failed.” The City could not consider such a tax until 2020. She felt the ban would not stop marijuana in Milpitas, since Proposition 64 did pass and it was legal in the state. The City Council was trying to regulate this product in Milpitas with the proposal at this meeting.

Mayor Tran was disappointed that proponents of marijuana in the city had what was a great fumble – a cannabis deal gone wrong. He noted how emotional this topic was, with some outrage at this public hearing. He considered the legality of it and the Mayor supported a permanent ban.

Councilmembers asked for clarification on the process for adopting ordinances for a ban, with concern regarding delivery, medical marijuana needs being met, and meeting what residents wanted. City Attorney Merewitz proposed the following, which became the motion made.

Motion: to direct staff to prepare a permanent ban along with an urgency ordinance to ban cannabis businesses in the City of Milpitas, and to bring that forward for a vote at a special Planning Commission meeting first prior to City Council consideration, with proper noticing of Public Hearings before the current moratorium expired, all in order to ban commercial use and regulate marijuana for personal use, according to state law

Motion/second: Councilmember Barbadillo/Councilmember Nuñez

Motion carried by a vote of: AYES: 4  
NOES: 0  
ABSENT: 1 (Phan)

## LEADERSHIP

### 21. Ordinance for a TOT (hotel) increase

Finance Director Will Fuentes and Economic Development Coordinator Daniel Degu came to the podium to provide background information on the proposal to raise the Transient Occupancy (hotel) Tax (TOT) tax from 10% to 14%, following voters’ approval of Milpitas Ballot Measure R in the November 6, 2018 municipal election.

Suzanne Mellon and Naomi Kim from the City’s consulting firm spoke to the Council with results of their study, detailing the impact on hotel room demand based on five possible tax levels. Overall, the proposed increase was not likely to impact demand for Milpitas hotel rooms following Council adoption of the ordinance recommended by staff.

Mayor Tran was happy with the outcome of Measure R and the possible proposed increase revenue from all the current, and anticipated new hotel rooms in new buildings coming soon, via the increase in the hotel tax rate.

City Attorney Merewitz read aloud the title of Ordinance No. 218.4, “An Uncodified Ordinance of the City Council of the City of Milpitas Setting the Transient Occupancy Tax Rate Within the City of Milpitas.”

Motion: to waive the first reading beyond the title and introduce Uncodified Ordinance No. 218.4 setting the Transient Occupancy Tax Rate at 14% within the City of Milpitas effective January 3, 2019 in anticipation of the Santa Clara County Registrar of Voters certifying results of the November 6, 2018 election including adoption of Milpitas Measure R

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of: AYES: 4  
NOES: 0  
ABSENT: 1 (Phan)

**REPORTS**

Mayor Tran offered a *Happy Thanksgiving* to all.

**NEXT AGENDA**

No comments were made on the December 4, 2018 preview agenda.

**ADJOURNMENT**

Mayor Tran adjourned the meeting at 12:12 AM on Wednesday, November 21, 2018.

**The foregoing minutes were approved by Milpitas City Council on December 4, 2018.**

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