



## MILLBRAE CITY COUNCIL

### MINUTES - DRAFT

July 9, 2019

### CALL TO ORDER MILLBRAE CITY COUNCIL

Mayor Lee called the meeting to order at 7:05 p.m.

ROLL CALL: Mayor Wayne J. Lee, Vice Mayor Reuben D. Holober, Councilmembers Ann Schneider, Anne Oliva and Gina Papan.

### PLEDGE OF ALLEGIANCE TO THE U.S. FLAG

#### 1. CEREMONIAL/PRESENTATION

- NONE

#### 2. AGENDA OVERVIEW/STAFF BRIEFING

- Calendar of Events
- Report of Bills and Claims
- Report out from Closed Session on June 25, 2019

City Manager Williams provided the agenda overview and updated the City Council on the following items:

- Beats and Brews on Broadway music series on July 11;
- Traffic Calming Workshop on July 18;
- City of Millbrae received Green Business Certification;
- Update on traffic congestion on Millbrae Avenue.

City Manager Williams stated that Item 14 (Approval of a Fee Waiver for the Sun Market Cooking Contest/Neighborhood Watch Awareness Event) is being removed from the agenda. The applicant is no longer requesting a fee waiver. He also stated that the City received two letters today regarding Item 15 (Smoking Ordinance) from the California Apartment Association and the American Cancer Society Cancer Action Network, Inc. Copies of the letters have been provided to the Council on the dais.

Assistant City Attorney Conneran reported out from Closed Session on Labor Negotiations on June 25, 2019. Council authorized settlement of the labor contracts which are before the Council for formal approval this evening.

#### 3. APPROVAL OF MINUTES

- Regular Meeting of June 25, 2019

Upon a motion/second by Holober/Oliva the minutes from the June 25, 2019 meeting passed unanimously.

#### 4. ORAL REPORT FROM CITY COMMITTEE/COMMISSION CHAIRS

NONE

**PUBLIC COMMUNICATION**

Emily Goodwin, representing Ygrene Energy Fund, spoke on Property Assessed Clean Energy (PACE) financing. She asked the Council to consider approving their program and provided materials.

**CONSENT CALENDAR**

Items 7 and 8 were pulled off the Consent Calendar for discussion.

5. Resolution No. 19-50 Authorizing the City Manager to Execute the Third Addendum to the Agreement with Eisenberg, Olivieri & Associates, Inc. for Commercial and Industrial Stormwater Inspection Services
6. Resolution No. 19-51 Authorizing the City Manager or Designee to Sign Agreements with the Following Three On-Call Planning, Engineering, and Building Consultant Firms: (1) 4LEAF, Inc.; (2) West Coast Code Consultants, Inc.; and (3) CSG Consultants in a Total Amount Not to Exceed \$3,000,000 for a Period of Three Years to Perform as Needed Professional Planning and Building Services
9. Council Consideration to Recess for the Month of August 2019
10. Approval of a Partial Fee Waiver of \$1,000 in Rental Fees and \$200 in Staff Costs for the Use of Library Rooms A & B, the Chetcuti Room, and the Community Center Great Room for the Young Adult Novelist Convention on January 25, 2020
11. Resolution No. 19-52 Authorizing the City Manager to Execute an Addendum to the Professional Services Agreement with CSG Consultants (CSG) for Contract Engineering, Plan Check and Building Services to Increase Total Compensation in an Amount Not to Exceed \$350,000, Bringing the Total Not to Exceed Agreement Amount to \$1,300,000 and Authorizing an Extension of Time through August 31, 2019
12. Resolution No. 19-53 Awarding a Construction Contract to Yerba Buena Engineering & Construction, Inc. for the Larkspur Pump Station Retaining Wall Project
13. Adoption of Resolutions (1) Resolution No. 19-54 Approving Tentative Agreements for Successor Memorandums of Understanding (MOU) with Teamsters Local 856, Miscellaneous Unit (2) Resolution No. 19-55 Approving Tentative Agreements for Successor Memorandums of Understanding (MOU) with Teamsters Local 856, Sanitation Unit; (3) Resolution No. 19-56 Authorizing Modifications to the Summary of Management Benefits; (4) Resolution No. 19-57 Establishing Salary Ranges for Part-time, Temporary and Seasonal Classifications in Compliance with California State Minimum Wage Law; and (5) Resolution No. 19-58 Adopting Revised Salary Schedules Effective July 14, 2019 and Amending the City of Millbrae Position Control Table for Fiscal Year 2019 - 2020

Upon a motion/second by Schneider/Oliva Items 5, 6, 9, 10, 11, 12 and 13 passed unanimously.

7. Reject, by Motion, the Two Bids Received for the Median and Landscape Maintenance Services Contract

Councilmember Schneider stated that she has no problem with rejecting the bids when they are that much over what the City estimated, but she gets a lot of complaints from the public about the way El Camino Real looks and she does not want this to be delayed.

Upon a motion/second by Papan/Oliva the Council unanimously rejected the two bids received for the Median and Landscape Maintenance Services Contract.

8. Resolution No. 19-59 Authorizing Collection of Fiscal Year 2019 – 2020 Stormwater Fees on the San Mateo County Tax Roll

Vice Mayor Holober stated that he does not have a problem approving this item tonight, but these fees have not been updated since 1994 and the Stormwater Fund is significantly subsidized by the General Fund. The City should look into increasing these fees.

City Manager Williams responded that the City has two studies underway, the Development Impact Fee study and the Service Fee study; these will be coming to the Council in the fall for consideration. Regarding the Stormwater fees, any increase would need to go through the Proposition 218 process.

Vice Mayor Holober stated that this resolution would lock us in for one year for Fiscal Year 2019-2020 then any update would go into effect July 1, 2020. Mayor Lee said the Vice Mayor is concerned because previous Councils have delayed looking at fees and our citizens are hit with huge increases to make up for the lack of action by the Council. We want to make sure staff is looking into this and we are raising our fees incrementally so as not to severely impact residents.

Upon a motion/second by Schneider/Oliva Resolution No. 19-59 authorizing collection of Fiscal Year 2019 – 2020 stormwater fees on the San Mateo County tax rolls passed unanimously.

14. Approval of a Partial Fee Waiver of \$220 in Rental Fees for the Use of Central Park and \$62.50 in Staff Costs for the Sun Market Cooking Contest / Neighborhood Watch Awareness Event on August 25, 2019

Item 14 was removed from the agenda.

**PUBLIC HEARING**

NONE

**EXISTING BUSINESS**

15. Further Consideration of an Ordinance Amending Chapter 5.95 “Smoking Control” of Title 5 of the Millbrae Municipal Code to Prohibit Smoking in Multi-Unit Residential Housing and Provide for Regulating Outdoor Smoking in the Vicinity of Such Units and Outdoor Spaces

Community Development Director Misner presented the report.

Councilmember Oliva asked, if we approve this ordinance, does that mean that Covenants, Conditions and Restrictions (CC&Rs) cannot allow smoking? Assistant City Attorney Yan responded that this ordinance would not allow smoking, but if there is a desire to exempt condominium units, the City could put in an exemption. Councilmember Oliva asked if an owner occupied unit is exempt from this ordinance. Assistant City Attorney Yan responded, the way the ordinance is written, it does not provide an exemption. Councilmember Oliva asked if someone buys a condo with a Homeowner Association (HOA), and they bought it with the right to smoke in it, is the City going to tell them they can't smoke in it? Vice Mayor Holober responded yes. The issue is that the smoke gets through the walls and it does not matter if the unit is owner occupied or rented.

Begin public comment.

Smitha Gundavajhala, representing a youth leadership institute, thanked the Council for the ordinance and asked the Council to include duplexes and triplexes in the definition of multi-unit housing.

Edward Schlesinger, San Carlos resident, said he compared Millbrae's ordinance to a model ordinance from a non-profit in Oakland. He would be happy to provide the Council with a copy.

Randy Uang, Millbrae resident representing Breathe California, said he supports the Council. He asked the Council to consider banning smoking in owner occupied duplexes and triplexes.

Stephen Sfiding, property owner of Stirling Properties at 422 and 464 Lincoln Circle, asked the Council for clarification on how he is supposed to enforce the smoking ban.

End public comment.

Councilmember Papan stated that this is a City ordinance and the City should be enforcing it. If anybody has a problem with neighboring tenants they can report it to the City so that Code Enforcement can handle it. Councilmember Oliva agrees that it is not the landlord's job to enforce an ordinance that the City put into place. She has a problem regarding owners in multi-unit housing. They bought into a real property without a smoking ban and as private property owners they have rights. They are locked into the purchase of their home and that is greater than a one year lease. One of the goals of this Council was to bring developments into our downtown and restricting smoking within forty feet of businesses will affect a lot of our prosperous businesses. I have a problem with the forty foot radius. It will affect homeowners and businesses. It will affect Fiddlers Green.

Vice Mayor Holober asked, regarding the private right of action questions, would it be possible to do both, require landlords to include language in their leases and post signs, but at the same time allow the public at large to enforce the ordinance? Assistant City Attorney Yan replied yes it is possible. An example is Redwood City where in addition to having language in the lease saying that smoking is prohibited, you have an obligation not only to the landlord not to smoke, but you also have obligation to your neighbors not to smoke and your neighbors can enforce that obligation if you breach it. If you are smoking in your unit, your neighbors can file a claim against you for breach of contract. Councilmember Papan said she has an issue with this since there are disputes between neighbors all the time. The City should do the enforcement. If you are opening up civil litigation, I am not comfortable with that.

Councilmember Schneider agrees that we should do both option one and option two. She is a landlord and she would not be able to enforce this. Enforcement will be tough. She wants City staff to work with landlords as we roll out the enforcement. She agrees with Councilmember Papan that the City should not

go that far. She agrees with Vice Mayor Holober that the City should have both layers. She agrees with including duplexes and triplexes in the ban. She disagrees with Councilmember Oliva. Properties are valuable, but you have a responsibility to the people around you. City Manager Williams clarified that only owner occupied duplexes and triplexes are exempt from the smoking ban.

Mayor Lee said if a landlord is compliant and does their due diligence, that is all they need to do. There must be a mechanism to say I have a problem with my neighbor and report it to the City. As an owner, I don't want anybody smoking in my building. There should be a smoking room like at the airport.

Councilmember Oliva said we do not want to encourage people to sue their neighbors. Councilmember Papan agreed with Councilmember Oliva. Mayor Lee said the landlord puts language in the lease, puts up their no smoking signs, the landlord does not have to enforce. Mayor Lee asked for clarification from legal counsel. Assistant City Attorney Yan responded that currently the ordinance does not impose on the landlord or grant public access. These are options other cities have taken and staff is presenting them to Council for discussion. Mayor Lee stated that we all agree that we do not want to create a system to encourage people to sue each other and we do not want the owner of the property responsible if he does his due diligence. Assistant City Attorney Conneran responded that is an option, it is not proposed.

Councilmember Papan said she is not comfortable with that option at this point in time. We should try the ordinance as it exists with certain modifications. The responsibilities we are currently giving the property owner under this ordinance is that they put it in the lease, they explain where somebody reports a violation, and then they put up signage. Councilmember Oliva stated that she agrees with Councilmember Papan that the City takes responsibility if there is a complaint and the City enforces. Vice Mayor Holober asked what happens if the landlord does not do the proper notification? City Manager Williams responded that it would be a violation of the City's municipal code and there is a fine of up to \$1,000. Councilmember Schneider said if someone complains and the landlord takes appropriate steps the phrase "appropriate steps" is not defined. How do you interpret what we have written into real enforcement? City Manager Williams responded they can call the City directly and the City will open up a Code Enforcement case. Assistant City Attorney Conneran said one benefit that the proposed language offers is that, by requiring the landlord to put the prohibition in the lease, this is also giving the landlord a tool, but not requiring them to use the tool. They now have grounds to evict the tenant if the tenant violates the rule. But we are not seeking to force the landlord to do that.

Being public comment.

Stephen Sfidina said as a landlord, you have to be onsite when there is a violation. Unless you specifically see it with your own eyes, it is a he says she says thing. How will I enforce it if I don't live there?

End public comment.

Mayor Lee stated that the Council has consensus about landlords not being held responsible as long as they do their due diligence. Councilmember Schneider said when smokers cannot smoke, they will find some place to go, so we have pushed smokers out to another area. I do not want to hold this up, but will my fellow Councilmembers support coming back for that? Mayor Lee said he supports this. Vice Mayor Holober said regarding designated smoking areas, we should not require them. If a property owner of a condo building wants to designate a space that is ok. Mayor Lee said we need to make sure there is an exemption for designated smoking areas. Assistant City Attorney Yan responded that currently the ordinance does not allow for designated smoking areas.

Councilmember Papan asked if the person behind me in a condo with a shared backyard is smoking in their backyard, is that a nuisance that I can report? Assistant City Attorney Yan responded, if someone is smoking in the yard of a multi-unit residence within forty feet, then they are violating the ordinance. Assistant City Attorney Conneran responded nothing in the ordinance defines it as a nuisance. Councilmember Schneider asked, should we enact this ordinance, will people living in multi-unit housing have more protections than people living in single family units? Assistant City Attorney Yan responded yes, that is correct.

Councilmember Papan stated that she is willing to try the ordinance as it currently exists. City Manager Williams stated that Council is moving in the direction of the current ordinance as written with no changes. Assistant City Attorney Yan stated that there was a discussion on designated smoking areas. Mayor Lee said if an owner wants to designate a smoking area, there should be an exemption for that. Vice Mayor Holober said that opens up the possibility of removing a common area for smoking. Mayor Lee said we are not saying they have to do it. We are giving them the option. Councilmember Schneider said this is something we should do some more thinking about as we look at other issues to fix. We should start getting the ordinance into place and come back for this in the future.

Mayor Lee said he does not think we are approving this tonight. City Manager Williams responded that the Council already approved the ordinance and this was supposed to be a second reading. Councilmember Schneider asked if this will come back to the Council in two weeks. Assistant City Attorney Conneran replied yes.

Councilmember Schneider asked for a definition of CC&Rs in the ordinance. Councilmember Oliva responded HOAs should vote on their own. Let them determine how they want their own building. Let them have a vote. Vice Mayor Holober said he disagrees. In the vast majority of apartment buildings, smoking is already prohibited. We heard from one resident about how she tried to change the HOA requirement and was unsuccessful. I understand your concern for property rights.

Councilmember Oliva said let them run their HOA. I am not promoting smoking whether it is a right of smoking or not smoking. Everybody should be protected. I am all in favor of that. What I have a problem with is we are infringing with an ordinance that number one we cannot enforce, and number two in a facility that we are not a part of. Let them work that out. Vice Mayor Holober said we can enforce this. Councilmember Oliva said, with all due respect, we have a litter ordinance and we have a hard enough time enforcing that. Vice Mayor Holober stated that anyone violating any of the provisions in this chapter is guilty of an infraction. It does not matter if you are a tenant or if it is an owner occupied unit. Councilmember Schneider says she strongly agrees with Vice Mayor Holober. Most CC&Rs have not been updated in ages. I do not think we leave this in the hands of HOAs. Mayor Lee said we are talking about public health which is more important than property rights. This is an important ordinance. It protects people from smoke.

City Manager Williams asked the Council to make a motion and take a vote. Assistant City Attorney Conneran said the motion would be to waive the reading and bring this back for a second reading. Mayor Lee asked if he can add an exemption for a designated smoking area. Assistant City Attorney Conneran said that is going to delay it further. Mayor Lee asked if he can make the change tonight if there is support for it. There was no support for this change.

Community Development Director Misner summarized the direction from Council as accepting the changes that were directed back on June 25<sup>th</sup> that have been put into the red-lined version of the ordinance that is before the Council tonight. The only other direction he heard from Council was that there is to be a provision that landlords would need to put into their lease the prohibition of smoking within the units.

Councilmember Papan stated that she made a motion for the ordinance as it currently exists.

Upon a motion/second by Papan/Schneider the motion to waive the hearing and introduce the ordinance amending Chapter 5.95 “Smoking Control” of Title 5 of the Millbrae Municipal Code to prohibit smoking in multi-unit residential housing and provide for regulating outdoor smoking in the vicinity of such units and outdoor spaces passed with a vote of 4:1 with Councilmember Oliva dissenting.

### **NEW BUSINESS**

16. Appoint Voting Delegate and Alternate for League of California Cities Annual Conference on October 16 – 18, 2019

Upon a motion/second by Papan/Schneider the Council unanimously appointed Mayor Lee as the voting delegate and Councilmember Schneider as the alternate.

### **COUNCIL COMMENTS**

Mayor Lee:

- Congratulated James Caccia Plumbing on their 40<sup>th</sup> anniversary on July 14.
- Congratulated Joe and Jenny Chen for the marriage of their son, Kevin Chen to Joyce Lee.
- Announced the Traffic Calming workshop on July 18 at 6:00 p.m. in the Council Chamber.
- Announced the Beats and Brews on Broadway music series on July 11.
- Thanked City Manager Williams and Police Chief Kunkel for meeting with the Millbrae Cultural Committee regarding the Neighborhood Watch program.
- Congratulated Public Works staff for getting the \$3 million grant for pedestrians and walkways.
- Thanked Police Chief Kunkel and San Bruno Police Chief Ed Barberini for handling the shooting at Tanforan Mall on July 2.
- Thanked City staff and Police Chief Kunkel for continuing to work on the issue of traffic congestion on Millbrae Avenue. Thanked the Cities of Burlingame and San Bruno, the San Francisco International Airport and Lyft for continuing to work towards a solution.
- Thanked the City Council for their hard work.

Vice Mayor Holoher:

- No comments.

Councilmember Schneider:

- Congratulated Administrative Services Director Louis for her first negotiations with the Teamsters.
- Reported that at the Airport Round Table meeting they discussed the changes in Lyft and Uber drivers.
- Reported that the Cultural Arts Advisory Committee meeting was cancelled because they did not have a quorum.
- Announced that elected officials are invited to an Active Shooter Drill on July 29 to August 2 at Mills High School.
- Announced a meeting on July 11 at 1:30 p.m. in the Community Center with Police Chief Kunkel to discuss Millbrae’s Get Ready event.
- Announced that Pacific Gas and Electric Company (PG&E) provided a presentation on their outage program.

Councilmember Oliva:

- No comments.

Councilmember Papan:

- Thanked City staff for assisting with the Metropolitan Transportation Commission (MTC) bus tour on June 19 where 57 people toured the county.
- Asked City staff to remove the pictures from our specific plan of architecture which this Council has clearly shown an opinion is not acceptable.
- Congratulated Councilmember Schneider for submitting her Letter of Interest for the Ad-Hoc Committee on CIWMP Review.
- Asked staff for data on what the current monthly parking passes are at the Bay Area Rapid Transit (BART) station. The Dublin Station is asking for funding to put up a 500 space garage. We are removing 500 spaces.
- Movie night on June 21 was great. Movie night is on the third Friday of the month. The next Movie night is on July 19 and the movie is Dumbo.
- SB 592 by Senator Weiner removes land use controls and impact just as negative as previously. Asked staff to provide language to Council so we can oppose legislation as quickly as possible.
- Announced Governor Newsom’s appointment of David S. Kim as Secretary of the California State Transportation Agency and Brian Annis as the Chief Financial Officer of the California High Speed Rail Authority (HSR). Requested that staff no longer attend HSR meetings. Let’s just put in our request that it is underground and go from there.

**CLOSED SESSION**

NONE

**ADJOURN CITY COUNCIL MEETING**

There being no further business to discuss, the City Council adjourned at 8:57 p.m.

The video recording of the meeting is available on the Millbrae Community Television Youtube website. You can click on the link below to view the recording of the entire meeting.

<https://www.youtube.com/watch?v=g7XZKbvcHuw>

By: \_\_\_\_\_  
Elena Suazo  
City Clerk

Approved: \_\_\_\_\_  
Wayne J. Lee  
Mayor