

**MEETING MINUTES  
CITY OF MILPITAS**

**Minutes of:** Regular Meeting of Milpitas City Council  
**Date:** Tuesday, April 3, 2007  
**Time:** 7:00 PM  
**Location:** Council Chambers, Milpitas City Hall,  
455 East Calaveras Blvd., Milpitas

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**ROLL CALL**

Mayor Esteves called the meeting to order at 7:00 PM. He announced that the scheduled Closed Session was canceled, and no Closed Session meeting was held.

**PRESENT:** Mayor Esteves, Vice Mayor Livengood, Councilmembers Giordano, Gomez and Polanski. Councilmember Gomez arrived at 7:05 PM.

**ABSENT:** None

**PLEDGE**

Boy Scouts Troop No. 92 Color Guard led the Pledge of Allegiance.

**INVOCATION**

A moment of silence was called by the Mayor.

**MINUTES**

MOTION: approve minutes of March 20, 2007 City Council meeting as submitted

Motion/Second: Vice Mayor Livengood/Councilmember Polanski

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

**SCHEDULE OF MEETINGS**

MOTION: to approve the Schedule of Meetings (Council Calendar)

City Manager Tom Williams noted that the Finance Subcommittee was canceled (May 2 was the next meeting) and the Sister Cities Commission meeting was canceled on April 26.

Councilmember Polanski noted that on Thursday April 12 was a joint Emergency Drill at Russell Middle School at 11:30 AM, with participation on the part of the School District, the City and the Citizens Emergency Preparedness Advisory Commission.

Mayor Esteves announced that the Utility Rate Subcommittee was still to be scheduled.

Motion/Second: Vice Mayor Livengood/Councilmember Giordano

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

**PRESENTATIONS**

Mayor Esteves proclaimed “**National Community Development Block Grant Week**” for the week of April 9 – 15, 2007. He noted some of the achievements met in the City of Milpitas with more than \$10 million in the last ten years of grant funding, helping homeless, seniors, low and moderate income families with housing. The plaque was accepted by City staff Felix Reliford and Gloria Anaya, who administer the CDBG program in Milpitas.

Mayor Esteves proclaimed “**National Young Child and Child Abuse Prevention Month**” for the month of April 2007 and had been celebrated since 1983. The plaque was accepted by City staff Toby Librande and Chrissy Rodriguez-Vigil of the City’s pre-school.

The annual **Children’s Memorial Flag** from the Child Welfare League of America was presented to the City, by two Youth Advisory Commissioners, Aditya Ullal and Jason Nguyen. The red flag showed images of six children, five in blue and one outlined. Milpitas resident Paisley Carswell, age 11, sang “Teach Your Children” song for the audience and bookmarks with lapel pins were distributed.

**PUBLIC FORUM**

**Alvin White**, Milpitas resident, spoke on the topic of Earthlink wi-fi service, which he felt was fraud. Since it was introduced, the service had not functioned as advertised. He swam daily at the Sports Center, and tried to use the wi-fi service daily at that location, but Earthlink did not function there or at other sites. He called it “public fraud.”

**ANNOUNCEMENTS**

Councilmember Giordano thanked City staff for adding thanks and recognizing first responders at the City’s annual 9/11 service. She highlighted a wide variety of upcoming events at the library, including a poetry slam and a sci-fi alliance gathering.

Councilmember Giordano also inquired, regarding the City Council handbook, with questions about what was the role of the Vice Mayor and his powers. Mayor Esteves responded that the Vice Mayor’s duty was to chair the City Council meeting when the Mayor was absent. She wanted to revise the Handbook to expand on those duties and requirements, and requested staff assistance. The City Attorney would respond on this topic.

Mayor Esteves announced that there was service available at the Library from Volunteer Income Tax Assistance (VITA) on the weekends to help residents with tax returns.

**ANNOUNCEMENT OF CONFLICT OF INTEREST**

None

**APPROVAL OF AGENDA**

Motion: to approve the agenda, as submitted

Mayor Esteves requested to hear Item No. 4 prior to the Redevelopment meeting.

Motion/Second: Vice Mayor Livengood/Councilmember Giordano

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

**CONSENT CALENDAR**

Motion: to approve the Consent Calendar (items noted with \*asterisk), as submitted

Motion/Second: Vice Mayor Livengood/Councilmember Giordano

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

- \* 1. Odor Control Report Received the progress report on odor control through March 26, 2007, indicating low number of complaints received about odor in the City.
- \* 7. Dispose Surplus Vehicle Approved the request to dispose of the surplus vehicle 1993 Mercury Cougar.
- \* 8. Grant Application for Calaveras Blvd Widening Authorized the Public Works Director to submit a grant application for the Calaveras Boulevard Widening Project.
- \* 9. Adopt Traffic Ordinance 43.206 Waived second reading of the Traffic Ordinance No. 43.206 “An Ordinance of the City of Milpitas Amending Chapter 100, Title V of the Milpitas Municipal Code Related to Traffic” and Adopted Traffic Ordinance No. 43.206, for Vehicles Exceeding a Height of Six Feet Prohibited from Parking.
- \* 10. Adopt Traffic Ordinance 43.207 Waived second reading of the Traffic Ordinance No. 43.207 “An Ordinance of the City of Milpitas Amending Chapter 100, Title V of the Milpitas Municipal Code Related to Traffic” and Adopted Traffic Ordinance No. 43.207, for Parking Time Limited on Certain Enumerated Streets.

- \* 11. Resolution Requesting the Allocation of Grant Funding
  - 1. Approved Resolution No. 7663 Requesting the Allocation of Grant Funding from the Santa Clara VTA CDT Capital Grant Program for the Midtown Transportation & Streetscape Improvements Phase II.
  - 2. Appropriated the new outside funding – VTA CDT Grant for \$1,500,000 and defunded \$1,500,000 of the 1997 RDA Bond Funds to N. Main Street Midtown Streetscape Improvements, Project No. 8165.
  
- \* 12. Santa Clara Valley Water Resources Protection Collaborative Guidelines
  - Adopted Resolution No. 7664 authorizing the implementation of the Santa Clara Valley Water Resources Protection Collaborative Guidelines and Standards for Land Use near streams.
  
- \* 13. Award Construction Contract to Precision Engineering
  - Awarded a Construction Contract to Precision Engineering in the amount of \$335,416, for Sewer Deficiency & Structural Correction Program – Open Cut, Phase 3, Project No. 6073.
  
- \* 14. Award for On call Street Light and Traffic Signal Maintenance
  - Awarded the bid for On-Call Street Light and Traffic Signal Maintenance to Cal-West Lighting and Signal Maintenance and authorized City Manager to sign a contract for the not to exceed amount of \$100,000, subject to approval as to form by the City Attorney
  
- \* 15. Contract Change Order for Sidewalk Replacement 2007
  - Authorized the City Engineer to execute the Contract Change Order for JJR Construction, Inc. for Project No. 4235, in the amount of \$43,000.
  
- \* 16. Agreement for Commercial Recycling Outreach
  - Approved an agreement for consulting services with Pat Davis Design Group, Inc. in the not-to-exceed amount of \$25,000, subject to approval as to form by the City Attorney.
  
- \* 17. Bid Proposals: Milpitas Communications Enhancement
  - Approved plans and specifications for Phase I of Project No. 4232, and Authorized advertising project for bid proposals for the project
  
- \* 18. Agreement with Dodson Psomas for Gibraltar Pump Station/Reservoir Improvements
  - Authorized the City Manager to execute the agreement with Dodson Psomas for Project No. 7101, in the amount of \$468,798, subject to approval as to form by the City Attorney.
  
- \* 19. Agreement with RBF Consulting for Abbott Avenue Storm Drain Improvements
  - Authorized the City Manager to execute the agreement with RBF Consulting for Project No. 4224 in an amount not-to-exceed \$31,890, subject to approval as to form by the City Attorney.

**JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**

- RA 1. CALL TO ORDER**
  - Mayor/Agency Chairman Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 8:29 PM.
  
- RA 2. ROLL CALL**
  - PRESENT:** Mayor/Chair Esteves, Vice Mayor/Vice Chair Livengood and Agency/Councilmembers Giordano, Gomez, and Polanski
  
  - ABSENT:** None
  
- RA 3. MEETING MINUTES**
  - Motion: approve the Redevelopment Agency minutes of March 20, 2007, including joint meeting with the City Council and Public Financing Authority, as submitted
  
  - Motion/Second: Agency/Councilmember Polanski / Agency/Councilmember Giordano
  
  - Motion carried by a vote of:
 

AYES: 5
NOES: 0
  
- RA 4. Approval of Agenda and Consent Calendar**
  - Motion: approve the agenda and Agency consent calendar (item with asterisk\*)
  
  - Motion/Second: Agency/Councilmember Giordano/ Agency/Councilmember Polanski

Motion carried by a vote of:

AYES: 5

NOES: 0

\* **RA 5.** MOU with MIL Aspen Associates for 101 Apartments

1) Adopted agency Resolution No. RA 280 and City Council Resolution No. 7661 approving execution of a Memorandum of Understanding between the City, the Milpitas Redevelopment Agency and MIL Aspen Associates, establishing general terms and conditions of the Agency's financial assistance for Aspen Apartments project.

2) Directed staff to prepare the Owner Participation Agreement, related loan documents, and Regulatory Agreement for Aspen Apartments.

## **RA 6. ADJOURNMENT**

Chair/Mayor Esteves adjourned the Redevelopment Agency meeting at 8:29 PM.

## **REPORT OF OFFICERS**

### **2. Opposing Senate Bill 49**

Vice Mayor Livengood explained his request seeking opposition to legislation in the State Senate, related to the professional football team San Francisco 49ers moving to Santa Clara, with the end result of the bill that the South Bay option would be eliminated. Meanwhile, that option could be good for Milpitas' economic development matters. SB 49 was punitive for the team and could cause them to move from the Bay Area. Other cities such as San Jose have adopted resolutions to oppose the legislation.

Mayor Esteves agreed with the Vice Mayor on this matter, and encouraged the pro team to remain in the Bay Area, and even to support them coming to Santa Clara County.

Motion: Adopt Resolution No. 7662 opposing California State Senate Bill 49, prohibiting a local agency or redevelopment agency from providing financial assistance to a sports stadium project, under certain conditions

Motion/Second: Councilmember Giordano/Councilmember Polanski

Motion carried by a vote of:

AYES: 5

NOES: 0

### **3. Facilities Naming Subcommittee Recommendations**

Vice Mayor Livengood gave the report of the subcommittee. He reviewed the three significant naming recommendations noted in the staff recommendation.

Councilmember Polanski agreed with all recommendations in the staff report, and was especially pleased about having a Milpitas street named after Iraq veteran Michael Mihalakis. Related to transportation, she would like a report back from staff about VTA bus routes and that agency's financial picture.

Councilmember Giordano discussed the Midtown BART station, and wanted to know if there was any discussion of calling it "Downtown." She was not thrilled with the choice of "Midtown" as a name for the future second Milpitas BART station.

Vice Mayor Livengood suggested leaving off that name of the future additional station, to accommodate the remarks by his colleague. Mayor Esteves agreed with Ms. Giordano about "downtown" as a better, more popular and understood term versus "midtown."

The Mayor asked for public comments.

**Lou Horyza**, a representative of the Knights of Columbus, discussed plaques for those honored as Citizen, Firefighter and Police Officer of the Year. He had a photo of the 2007 three current recipients. He said the design of the plaque would need to be discussed and decided further.

**Frank DeSmidt**, Rotary Club member, brought up the matter of the annual Gene Schwab "Service Above Self" Award and existing plaques for those employee winners. He suggested that perhaps these could be displayed in a public area of City Hall, too.



Ms. Tam talked about future phases of the Civic Center Master Plan, including a two-story community center in symbiotic relationship with the Senior Center next door.

Councilmember Polanski asked about overhangs and connecting parking to the building, without getting wet in rain, for example. "Concept A" for linking the two via outdoor patio connection was displayed.

Mayor Esteves invited speakers from the audience:

**Lou Horyza** asked about the current Veterans Memorial, and what would happen to it if some of the scenarios were built. Ms. Greiner replied that this was only a presentation this evening, and staff had not discussed veterans' area or any possible movement of it.

Vice Mayor Livengood noted there would be a couple options to have the Veterans Memorial remain undisturbed, and others might call for it to be moved. Ms. Greiner noted that only if the two buildings were connected would the Veterans Memorial need to be moved.

**Ed Connor**, sat with the hostess at the City of Mountain View's new Senior Center, and gave some remarks of visits to other cities' senior centers. In Mountain View, the minute it opened, the City outgrew the new building. So, he urged wise planning far into future.

**Barbara Ebright**, did not like the idea of the buildings being connected, due to a potential for small children running around, and safety concerns of the seniors.

**Alvin White**, felt public participation was not in process regarding the new Center. He referenced some past activities.

Councilmember Polanski responded to Ms. Ebright, that she liked the synergy of the two buildings (Senior Center and Community Center) connected for entire community, but she understood concerns of older participants.

Vice Mayor Livengood referenced Option III with a \$16.5 million projected cost, and he asked was it possible to do all on the list for that option, except for the Community Hall? What then would be the cost, and would it alleviate the need for additional parking? He wanted to figure out a way to build the facility, and phase in expansion that would cause need for more parking.

Mayor Esteves looked at projected growth of the senior population in Milpitas and wanted to find a balance of how much could be accommodated, regarding parking and financing. He wanted the Center to be good for the next 20 years.

Councilmember Giordano felt strongly about the need for a large Community Hall room, and said that room could be used in off hours. She and the Mayor discussed this at every meeting, the need for that room. Also, she asked what was the expected lifespan of the new building, and staff replied 40 years life.

Councilmember Polanski, in considering parking, wondered if it was possible to renovate and expand, but locate another area that could seat a limited number of visitors. Staff pointed out that the Center must have a hall to feed a minimum of 150 seniors for lunch program every day (currently the City was at capacity for senior lunch program).

Ms. Tam said a formal Parking Management Plan could be created and planned if Option III was selected. Councilmember Polanski noted that it did not touch the Veterans Memorial at all. Mayor Esteves responded to the direction for parking accommodations.

Councilmember Gomez commented on Option III's \$16.5 million cost v. the \$11 million original budget, and wanted staff to give Council a report on what other CIP projects

were to be considered, and any Projects to cut in order to pay for the increased cost of the new Senior Center facility.

Vice Mayor Livengood agreed that finance and parking issues remain with Option III. The Subcommittee had come up with good recommendations for the long term in meeting the needs of the community for a Senior Center for all.

Motion: Receive staff report, and approve the Senior Center Facilities Subcommittee's recommendation of the "Renovate and Expand" concept for the Milpitas Civic Senior Center, Project No. 8176 - with financing and parking issues to be addressed by staff in a report back to City Council

Motion/Second: Councilmember Giordano/Councilmember Polanski

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

Bonnie Greiner thanked the participants who gave valuable input and comments, and the Mayor complimented the Senior Advisory Commissioners present at the meeting.

## **NEW BUSINESS**

### **5. Analysis/Comparison of City Attorney Services**

Human Resources Director Carmen Valdez reviewed the staff report to Council. She provided a salary comparison for City Attorneys from eight local cities of comparable size (while 102 cities were surveyed by staff, in total).

Councilmember Giordano reviewed this topic previously in two subcommittee meetings. Last year, the Finance Subcommittee point of view was how the City could save money on costs for legal services. It was not clear that there were cost savings. The key was the average dollar/hour of \$200/hour for contract services versus the \$65.26 average hourly rate for (in-house) one City Attorney, two Assistant City Attorneys, and one secretary. Ms. Giordano was clear that the City's current contract legal firm of Meyers, Nave received excellent top ratings on its service in past employee evaluations.

Councilmember Polanski commented that upon review, the City Council must look philosophically at the question of the expertise of a contract law firm versus the services of one in-house, less expensive, attorney. Her view was that the City did not have any reason to change at this time.

Mayor Esteves expressed that he had not heard the real reason why this matter was coming forward or what initiated it.

Councilmember Giordano responded to him that the Finance Subcommittee reviewed the costs, and the City Attorney Subcommittee discussed service delivery. The Mayor then asked what was the expected action at the meeting. Councilmember Giordano was asking for guidance and direction from the City Council, as there was a split on the issue at the Subcommittee level.

Councilmember Gomez clarified that this topic was triggered at budget discussion time last year, when the Finance Subcommittee was looking at cost saving measures.

Mayor Esteves believed that an in-house attorney would not be as experienced as a contracted law firm. Without large litigation costs in the past year, the base budget was \$413,000 and the actual was compared to the previous year's costs, plus special litigation expenses. The Mayor did not see any economic advantage and felt the level of service was very good from the current City Attorney.

Councilmember Polanski was favorable to the variety of expertise available from a contracted firm, such as Meyers, Nave and did not want to offer any motion to initiate a

change in City Attorney services.

The Mayor invited audience members to address the City Council.

Speakers:

**Isaac Hughes**, Milpitas resident, requested five minutes to speak (not granted by the Mayor), due to the serious nature of the subject, and he had done extensive research. He quoted California Government Code §1090, and referenced documents located on the internet related to conflict of interest of the current City Attorney. He questioned the legality of making contracts by law firm owners, and then requested review of legal advice given to the Council regarding a recent re-zone application considered at a public hearing. Lastly, Mr. Hughes announced he would file a complaint to make null and void the City Attorney's contract.

Motion: to move forward with in-house legal services by July 1, with an internal recruitment by the City's Human Resources department for an attorney, and direct staff to work with the City Attorney Subcommittee on plans for recruitment

Motion/Second: Councilmember Giordano/Vice Mayor Livengood

Vice Mayor Livengood reviewed history that the City had both contracted out and had in-house City Attorneys in the past. When the City contracted out (depending who it was with), the costs could go up a lot beyond the City's control. He felt the City could lose control over the service, and mentioned staff surveys with some dissatisfaction on the level of service, with a concern for a solid level of consistent services. With a generalist, the City would overall save money by going to an in-house attorney, and he supported the latter concept in the best interests of the citizens and City staff.

Councilmember Polanski was concerned about hiring an in-house attorney, using solely an internal recruitment effort. She noted that Council hires or fires only two staff members: the City Manager and the City Attorney. Perhaps, the City Council should have the same process of the use of an outside recruitment firm, such as was done when the City Manager was hired.

Vice Mayor Livengood responded that he had no strong feelings on how recruitment was conducted, either way was fine.

Mayor Esteves put a weight on the quality of services received when contracting out. There was a big risk to hire a generalist City Attorney, and he was concerned about hiring from within the City. He was very uncomfortable with what was proposed.

Ms. Valdez replied another option for the Council was that the City could use an outside firm to screen applications, and then in-house set up interviews of qualified candidates.

Motion carried by a vote of:  
AYES: 3  
NOES: 1 (Esteves)  
ABSTAIN: 1 (Polanski)

Councilmember Polanski stated that she was dismayed by the discussion on the recruitment process, just held. She was more than willing to work with Ms. Valdez in the hiring process for City Attorney or any position.

**6. AT&T Project Lightspeed**

Economic Development Director Diana Whitecar announced that several AT&T staff were present to provide information to the City Council and residents of Milpitas. Staff gave some comparison of revenue from the Comcast cable television franchise, and that of revenue from the new state AT&T franchise for highspeed services on demand.

Vice Mayor Livengood asked questions about what was subject to the franchise fee with Project Lightspeed. He asked staff about costs/revenues the City would realize, and staff

