

**MEETING MINUTES  
CITY OF MILPITAS**

**Minutes of:** Regular Meeting of Milpitas City Council  
**Date:** Tuesday, September 4, 2007  
**Time:** 7:00 p.m.  
**Location:** Council Chambers, Milpitas City Hall,  
455 East Calaveras Blvd., Milpitas

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**CALL TO ORDER**

Mayor Esteves called the meeting to order at 7:01 p.m.

**ROLL CALL**

**PRESENT:** Mayor Esteves, Vice Mayor Livengood, Councilmembers Gomez and Polanski. Councilmember Giordano arrived at 7:03 p.m.

**ABSENT:** None

**PLEDGE**

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

**INVOCATION**

Pastor Paul Mayes, Christ Community Church, offered a prayer of thankfulness for the City and for wisdom and unity of the Council.

**MINUTES**

Motion: To approve minutes of August 21, 2007 City Council meeting, as submitted.

Motion/Second: Councilmember Giordano/Councilmember Polanski

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

**SCHEDULE OF MEETINGS**

Vice Mayor Livengood noted two additions to the schedule on September 19 - a 4:00 p.m. meeting with the City of Fremont, and a 5:30 p.m. Facilities Naming Subcommittee meeting.

Motion: To approve the Council Calendar/Schedule of Meetings as amended.

Motion/Second: Vice Mayor Livengood/Councilmember Giordano

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

**PRESENTATIONS**

Mayor Esteves proclaimed the following:

1. *Patriot Day – September 11, 2007* – Mayor Esteves proclaimed this as a day to remember and honor those who perished on September 11, 2001, and set Tuesday, September 11 at 9:00 a.m., at the Milpitas Civic Center, as a memorial. Soldier and Milpitas Police Officer Levine Visico accepted.
2. *Honoring First Responders* – Mayor Esteves proclaimed September 11 to honor police officers and firefighters who lost their lives on 9/11 while trying to rescue others. Fire Chief Clare Frank and Police Chief Dennis Graham accepted.
3. *Senior Housing Solutions – Opening of Vasona House* – Mayor Esteves proclaimed appreciation to Senior Housing Solutions on opening the “Vasona House” in providing low income seniors housing. Bob Campbell, Executive Director of Senior Housing Solutions, Sobranto Center for Nonprofits, accepted. Mr. Campbell thanked the Planning staff for their efforts.

**PUBLIC FORUM**

Rob Means, a member of the public, urged the public to see the movie “The 11<sup>th</sup> Hour.”

**ANNOUNCEMENTS**

Councilmember Giordano announced two events – the Library’s “A Pirate’s Life” that runs from September 17-22, and the Arts Commission’s “Arts Day” on October 6 from 10:00 a.m. to 2:00 p.m. at the Civic Center plaza.

**ANNOUNCEMENT OF CONFLICT OF INTEREST**

None

**APPROVAL OF AGENDA**

Motion: To approve the agenda.

Motion/Second: Councilmember Polanski/Councilmember Gomez

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

**CONSENT CALENDAR**

Councilmember Giordano requested items No. 1 and No. 2 be pulled from the Consent Calendar and considered separately. Councilmember Polanski requested item No. 4 be pulled from the Consent Calendar and considered separately.

Motion: To approve the Consent Calendar (items with asterisk\*) with the exception of items number 1, 2 and 4.

Motion/Second: Vice Mayor Livengood/Councilmember Giordano

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

\*5. Resolution Amending Classification Plan

Adopted Resolution No. 7700 amending the City of Milpitas Classification Plan to add a new classification of City Attorney, with a salary recommendation of \$159,204.33 - \$184,298.92.

\*6. Public Improvement Plans and Final Map for Calaveras Estates and Resolution Certifying Project’s Annexation to District No. 2005-1

1. Approved public improvement plans and final map for Project No. 3179.
2. Authorized the City Manager to execute the secured Subdivision Improvement Agreement subject to the approval of the City Attorney as to form.
3. Adopted Resolution No. 7701 Certifying and Annexing Tract No. 9891 to Community Facilities District No. 2005-1.

\*7. Contract Change Order with Norwood Construction for Communication Enhancements

Authorized the City Engineer to execute the Contract Change Order for Milpitas Communication Enhancements – Phase 1, Projects No. 4232 and 8093, with Norwood Construction in the amount of \$40,428.

\*8. Award Bid for Energy Efficiency Measures to T. Marshall Assoc., Ltd.

Awarded the bid for Energy Efficiency Measures – Existing Lighting Retrofits to T. Marshall Assoc., Ltd., and authorized the City Manager to sign a contract for the not to exceed amount of \$83,548.68, subject to approval as to form by the City Attorney.

\*9. Award Bid for McCarthy Ranch Landscape Maintenance to Jensen Landscape Services, Inc.

Awarded the bid for McCarthy Ranch Landscape Maintenance Services to Jensen Landscape Services Inc., and authorized the City Manager to sign a contract for the not-to- exceed amount of \$73,824 for the first year of the contract, 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 7:23 p.m.

**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 August 21, 2007, including joint meeting with the City Council, as submitted

Motion/Second: Vice Chair/Vice Mayor Livengood/ Agency/Councilmember Polanski

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 (items with asterisk\*)

Motion/Second: Agency/Councilmember Giordano/Agency/Councilmember Gomez

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

**RA5. Progress Report on Library, East Parking Garage and Related Projects**

Steve Erickson, Interim Capital Improvement Manager, presented the staff report. He reviewed the library budget of \$39 million, contract change orders, schedule, and issues and accomplishments. He further reviewed the library lease agreements relating to maintenance and usage, noting the term of the lease is 30 years, and rental is \$120,000 a year until 2013.

Mr. Erickson reviewed the East Parking Garage noting the budget is \$12.5 million with \$900,000 remaining in the budget. He reported the project is on schedule and is 98% complete. He reported that SJ Amoroso will be using the garage for parking only, as directed by the Library Subcommittee, and signed a contract to assume full responsibility and liability for any damages to the garage.

Mr. Erickson gave a brief overview of the North Main St. Streetscape project and change orders noting the project is 33% complete. The project design is on schedule.

Agency/Councilmember Gomez questioned the decision to have a dedication ceremony in December during the holiday season. Mr. Erickson responded that the move is scheduled for that time. Greg Armendariz, Public Works Director, reported that the County Library preferred not to have the dedication in December and this would be brought before the Library Subcommittee with a recommendation to the Council.

Chair/Mayor Esteves noted that the move could be completed by October/November and will be discussed at the Library Subcommittee.

Motion: Receive Progress Report on the new Library, East Parking Garage, and Related Projects Numbered 8154, 8161, 8162, and 8165.

Motion/Second: Vice Chair/Vice Mayor Livengood / Agency/Councilmember Gomez

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

**RA6. Unaudited Financial Status Report for Fiscal Year 2007**

Emma Karlen, Director of Finance, presented the staff report. She reported staff is preparing the Fiscal Year 2006-07 budget year-end report for the financial audit. The report indicates the total General Fund revenue exceeds the original budget projection by \$5.7 million. Two of the major revenues, sales tax revenue and transient occupancy tax revenue, are above budget by 7% and 20% respectively. She reviewed the other revenue sources noting that building permit revenue exceeds the original budget estimate by 31%, but warned that building permit fees may drop because of the housing slowdown.

Ms. Karlen further reported other financial resources were below budget by \$7.47 million, due to the updated cost allocation plan that recalculated the amount of reimbursement for administration and overhead expenses. She noted the Council had

approved deferring loan repayment from the Agency to the City in order to assist the future General Fund budget.

Ms. Karlen reported that City departments are on track with their operating expenses and achieved a savings of 5%. She noted in June 2007, the Council approved pre-funding retiree medical benefits by establishing an irrevocable trust with CalPERS, with an initial funding of \$9.5 million. The net reduction to the total General Fund reserve is \$4.22 million. At the end of FY07, there will be \$14.9 million in the unreserved fund balance and the General Fund will continue to reserve \$5.4 million for PERS stabilization.

Vice Chair/Vice Mayor Livengood posed questions regarding the designated retiree medical benefits and inquired if there is a plan to build the reserve up. Ms. Karlen responded there will not be pre-funding but will be building up the reserve in CalPERS for a better return.

Ms. Karlen responded also that the designated PERS rate stabilization fund is for any unanticipated rate increases, but noted the these rates have recently stabilized. The City will not receive a PERS rate decrease. Mr. Livengood requested this fund be watched as PERS continues to do well, the City may receive some benefit.

Agency/Councilmember Giordano inquired what formula is used for sales tax revenue. Ms. Karlen responded there is no formula used, but PERS prepares a five year analysis and takes into consideration cost of living increase and known new businesses. She reported they also rely on consultant projections.

Chair/Mayor Esteves noted specific correction to the number on the changes in fund balances. He inquired how the retiree medical benefits would be funded and was advised it would come from the total reserve.

Agency/Councilmember Gomez inquired about the Government Accounting Standards Board Memo No. 45 and the recent outreach effort to City employees. Ms. Karlen responded the City Manager held a meeting in May to review it with all employees and employees also received a letter with their paychecks explaining this benefit.

Motion: Receive the Finance staff report on Fiscal Year 2006-07 year-end status.

Motion/Second: Vice Chair/Vice Mayor Livengood / Agency/Councilmember Giordano

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

**\*RA7.** Approve Fiscal Year 2006-08 Year End Budget Adjustments and Adopt Resolution

1. Approved the Fiscal Year 2006-07 year-end budget appropriations and transfers (itemized on the budget change form).

2. Adopted Redevelopment Agency Resolution No. RA298 determining the planning and administration expenses funded in Fiscal Year 2006-07 by the Housing Reserve Fund are necessary for the production, improvement and/or preservation of affordable housing for low and moderate income households.

**\*RA8.** Receive 2007-08 Final Budget and 2007-12 Final Capital Improvement Program

Received the Final Budget for FY 2007-08 and Capital Improvement Program for 2007-2012.

**\*RA9.** Authorize Agency Director to Execute Certificate of Completion for KB Home Terra Serena

Authorized the Agency Executive Director to execute the Certificate of Completion, pertaining to certain residential units within Tract 9698, KB Home Terra Serena Project No. 3160, subject to approval of the City Attorney as to form.

**RA 10. ADJOURNMENT**

Chair/Mayor Esteves adjourned the Redevelopment Agency meeting at 7:55 p.m.



Ms. Karlen reviewed recommendations to further improve collection that include adoption of a public nuisance ordinance and will have lien or special assessment procedures, not accepting check payment for one time service, work with Police Department to charge for DUI prosecution, and shorten the collection cycle to 45 days for property damages that do not have insurance coverage.

Vice Mayor Livengood, Councilmember Gomez and Councilmember Polanski expressed concerns regarding the number of recognizable and large businesses on the collections list. Councilmember Gomez asked for clarification on staff's efforts to collect. Vice Mayor Livengood requested additional efforts be made in regards to the money owed to the City by Walmart.

Councilmember Giordano inquired about collecting the unpaid bills when a business applies for a new business license, and requested clarification about the DUI prosecution fees and neighborhood beautification violation fines. Ms. Karlen responded that DUI expenses are hard to collect, as some individuals receive jail time, and that staff focuses on compliance issues rather than fines.

Councilmember Giordano requested that compliance and fines be brought back to the Finance Subcommittee to determine a procedure for collection. City Attorney Mattas clarified that the City can levy an assessment fee on a property and staff will continue with collection efforts on all outstanding accounts despite approval of the write-offs.

Mayor Esteves inquired about assessments. The City Attorney said that the City can pursue this, but can only collect if the property is sold or re-financed.

In response to Mayor Esteves, Ms. Karlen stated that staff will proceed with the implementation of new collection procedures after the ordinance is adopted.

(1) Motion: To approve the FY 03-04, FY 04-05 and FY 05-06 Accounts Receivable Write-offs.

Motion/Second: Vice Mayor Livengood/Councilmember Gomez

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

(2) Motion: To waive the first reading beyond the title of Ordinance No. 274.

City Attorney Mattas read aloud the title of the Ordinance No. 274.

Motion/Second: Vice Mayor Livengood/Councilmember Gomez

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

(3) Motion: To introduce Ordinance No. 274 to add Chapter 1100 to Title V of the Milpitas Municipal Code to expand the definition of a public nuisance and to provide a cost recovery mechanism for public nuisance abatement.

Motion/Second: Vice Mayor Livengood/Councilmember Gomez

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

## **RESOLUTION**

### **4. Resolution for Management/ Unrepresented Employee Wages and Benefits**

Tom Williams, City Manager, made a brief presentation reviewing the proposed salary/benefit increase for management/unrepresented employees for 3.6% effective January 2007, and a 3.75% increase effective July 2007 for a total of 7.35%. He noted this group has not had a salary increase since July 2004.

For executive management, it is proposed that they receive 5 hours of leave time per pay period for a total of 130 hours per year, and a cap of 260 hours. For unrepresented/ non-executive staff employees, it is proposed that they receive one week (40 hours) of management leave. For Fire Command staff, he proposed an increase in uniform allowance to \$1,000 and a 1% retiree dependent fund contribution (excluding the Fire Chief). The proposal was approved by the Finance Subcommittee, but the members did not see the proposal for the 40 hours of management leave. The overall increase for the management/unrepresented employees is 8.28% and for management staff, 7.49%.

Councilmember Polanski posed questions regarding the 5 hours per pay period for executive management, or 130 hours a year. City Manager Williams responded this was an incentive to attract and keep employees and is competitive with other jurisdictions, with a 260 hours maximum accrual. Councilmember Polanski stated she would not vote to approve the salary increase, in keeping consistent with her voting record on other group's salary increase requests.

Mayor Esteves posed questions regarding the 5 hours per pay period of executive management leave and the 40 hours of management leave inquiring if this was typical. City Manager Williams replied it is an incentive in lieu of salary and is at the discretion of the City Manager/department head. Mayor Esteves expressed concern that this would set a precedent for other bargaining groups.

Mayor Esteves inquired about the publication of employee names and salary information, based on a recent court decision. City Attorney Mattas responded that the City Attorney's office is preparing a memo to Council and staff regarding this Supreme Court decision. He noted that Milpitas' Open Government Ordinance calls for salaries to be published by job title and that the Council can make a decision to include the names of employees.

Vice Mayor Livengood spoke in support of the salary and benefit increases to keep Milpitas competitive and felt it is a reasonable request.

Motion: To adopt Resolution No. 7699 approving the cost of living increases and benefit changes for management/unrepresented employees.

Motion/Second: Councilmember Gomez/Councilmember Giordano

Motion carried by a vote of: AYES: 3  
NOES: 2 (Esteves, Polanski)

Mayor Esteves requested that he receive information on the legal requirements of releasing employee salaries and names.

## RESOLUTIONS

Two resolutions were adopted on the Consent Calendar.

## BIDS AND CONTRACTS

Three items were adopted on the Consent Calendar.

## ADJOURNMENT

Mayor Esteves adjourned the meeting at 8:44 p.m.

The foregoing minutes were approved by the Milpitas City Council as submitted on September 18, 2007.

  
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Donna Biles, Deputy City Clerk