

**MEETING MINUTES
CITY OF MILPITAS**

Minutes of: Regular Meeting of Milpitas City Council
Date: Tuesday, November 6, 2007
Time: 7:00 PM
Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas

ROLL CALL

Mayor Esteves called the meeting to order at 7:00 PM.

PRESENT: Mayor Esteves, Vice Mayor Livengood, Councilmembers Giordano, Gomez and Polanski

ABSENT: None

PLEDGE

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

INVOCATION

A minute of silence was observed.

MINUTES

Motion: approve the minutes of October 16, 2007 City Council meetings, as amended

City Clerk Mary Lavelle requested a correction on page 9 to reflect comment on the new Senior Center construction project (not the Library, as noted in draft minutes)

Motion/Second: Councilmember Gomez/Councilmember Giordano

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

SCHEDULE OF MEETINGS

Motion: to approve the Council Calendar (Schedule of Meetings) for November, with the changes announced by the City Manager:

- Open Government Subcommittee on November 7 was canceled.
- CIP Subcommittee was scheduled for November 8 at 6:00 PM.
- City Attorney Subcommittee was scheduled for November 15 at 5:30 PM.

Motion/Second: Councilmember Gomez/Vice Mayor Livengood

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

PRESENTATIONS

Mayor Esteves proclaimed the following:

1. *Program Benefiting People with Intellectual Disabilities* – presented to two Councils of the Knights of Columbus: Saint Elizabeth’s Council #8747, accepted by Tim Crews and Skip Yenchik; and St. Peter the Apostle Council, accepted by Ralph Manfredo and Chuck Gullo
2. *Veterans Day*, proclaimed for Sunday, November 11, 2007 – accepted by Ed Kantack, member of the Knights of Columbus
3. *Buddy Poppy Promotional Month* in November by the Veterans of Foreign Wars of the United States. The proclamation was to be mailed.

Mayor Esteves issued Commendations to those who assisted in the life-saving effort of Milpitas High School freshman Jerry Pham on October 12, 2007:

- 1) Student Perry Pham, in recognition of his extraordinary life-saving effort
- 2) Student Kana Suzuki, in recognition of her extraordinary life-saving effort
- 3) MHS Security officer Arlene Rancourt, in recognition of her extraordinary life-saving effort
- 4) MHS Security officer Rodney "Scott" Rancourt, in recognition of his extraordinary life-saving effort
- 5) Milpitas Police Officer Christopher Nicholas, in recognition of his extraordinary life-saving effort
- 6) Milpitas Police Officer Kris Strauss, in recognition of his extraordinary life-saving effort

PUBLIC FORUM

Peter Nelson stated he had previously requested an appeal on Fire Department fees, would like to place this matter on the agenda and wanted the City Council to reach its decision in full view of the public, with all the facts to come out. He requested the date for his hearing. Mayor Esteves indicated that staff would respond.

Isaac Hughes commented on the blue public speaker card and wording on it, per state law. He wanted a full blown investigation of the incident at the High School to find out what happened. He made a verbal public information request for all 911 call transcripts and records at the City about the incident. Lastly, he demanded no use of eminent domain with regard to any non-profit religious building or property.

Heidi Pham noted that there was one more person, a student named Tim Ma, who helped in the life saving incident of Mr. Pham. She went on that it was time to change, and you need to change. She felt a need for a representative who spoke other languages to communicate with parents and residents, particularly at the School District. She felt that she represented all citizens.

ANNOUNCEMENTS

City Manager Williams introduced and welcomed the new Planning & Neighborhood Services Director James Lindsay, who returned to Milpitas after a long previous career with the City.

Councilmember Giordano announced an opening on the board for Terrace Gardens Board of Directors and volunteers were sought. She announced a musical event at Milpitas Library on Saturday, November 17 at 3:00 PM. Of City staff, Ms. Giordano requested public announcement of the date of the Holiday Tree Lighting, and also the parade next year once known. City Manager announced December 1 at 6:00 PM as the scheduled time for the Tree Lighting event.

Parks & Recreation Director Bonnie Greiner reported that staff would come to the City Council at the next meeting with the Special Events calendar, and would discuss the parade then.

Mayor Esteves announced a free workshop on Citizenship Services, at no cost at the Milpitas Library on Saturday, December 8.

ANNOUNCEMENT OF CONFLICT OF INTEREST

None

APPROVAL OF AGENDA

Motion: to approve the agenda, as amended

Councilmember Gomez requested that Item No. 3 regarding water and sewer rate increases be removed from the agenda, and not bring it back.

City Attorney Michael Ogaz noted that the Council could do so, upon affirmative vote of the Council.

Vice Mayor Livengood responded that in the past, Council had not always complete agreement with residents on rates, but there was grudging understanding about need for increases. He was not comfortable to proceed with the current rate increases proposed. He agreed with Mr. Gomez.

Councilmember Polanski noted it was a noticed public hearing, and she was opposed to rate increases for water and sewer. If the item was removed from the agenda, she asked the City Attorney and City Clerk, would they find out how many protest votes were received. She spoke a community newsletter (no longer in publication) which could have helped to inform the public.

Councilmember Gomez defined, that on outreach and education efforts by City staff, he wanted standards for notifying the community. H suggested that perhaps that topic could be taken up by the Open Government Subcommittee.

Councilmember Polanski was dissatisfied that other Councilmembers were discussing an issue while deciding about the agenda, and that they needed to follow governmental processes.

Mayor Esteves said there was a good process, he wanted public to know what was going on, and it was not just about outreach. He wanted to proceed and wanted to hear from those gathered at this public meeting.

Motion: Councilmember Gomez then made a motion to do what he requested earlier, removing Item No. 3 from this evening's agenda with a second from Ms. Giordano.

Mayor Esteves spoke on the history of why the rates issue was before the City Council (gave background). He discussed his previous vote, the waste of time and money on sending out the letters to property owners, and the concern about a waste of time of the public and the staff.

Vice Mayor Livengood reminded the public that Proposition 218 was not a law of Milpitas, it was approved by the voters of the state of California. He spoke to previous times raising rates in this City, and said the Mayor voted in the past to raise rates on water and sewer. He did not want a political battle over issues facing City on water charges. He did not want to move forward without support of the people and mentioned earthquake issues.

Councilmember Gomez stated he could not agree more with Vice Mayor Livengood more. He called for a vote on the motion.

Councilmember Polanski asked for a point of order, stating all were politicizing things before the Council even got to this matter on the agenda. She was against rate increases all along, in the last many months. She found tonight a disrespect of the governmental process, and the way it was 30 minutes of this Council meeting was a sham

Mayor Esteves wanted to congratulate the people of Milpitas, the power was with the people, who were smart and intelligent, and he thanked them all for participating. He gave further comment about this evening complimenting the residents who came down to City Hall to give their comments on this issue.

City Council then voted on the earlier motion to remove Item No. 3 from the agenda.

Motion/Second: Councilmember Gomez/Councilmember Giordano

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

Upon request by Mayor Esteves and permitted by City Attorney Ogaz, City Clerk Lavelle announced aloud the number of rate protest forms received:

4,184 protested the water rates increase
4,169 protested the sewer rates increase
277 were received, but considered not valid protests (due to missing information)

CONSENT CALENDAR

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

Councilmember Polanski requested removal of Item No. 5 from the consent calendar.

Motion/Second: Councilmember Giordano/Vice Mayor Livengood

Ms. Joki explained that the County Fire Marshals Association began review of the new state Fire Code last spring, and each City would bring the new code with its local amendments to their City Councils for adoption.

Amendments to the state fire code concerned four topics: requirements for hazardous materials and toxic gas storage, water sprinklers in new developments, administrative provisions and penalty provisions.

The major change in amendments in Milpitas was for the sprinklers and this change was happening across all cities in county.

Councilmember Polanski asked if the fee schedule was the proposed one? Staff replied, yes, it was attached to the draft Resolution document.

Mayor Esteves next opened the Public Hearing for comments.

Bob, a Milpitas resident, asked if this matter was something coming up for action by the Council. He felt a comprehensive assessment on existing building impact and benefits must be done before voting on such changes.

Fire Marshal Joki explained that the proposed amendments incorporated existing material on hazardous materials and toxic gas, and for wildland urban interface – these were to state standards. Amendments to Fire Code were adopted locally with the main change the sprinkler requirement for new structures. She identified which cities in the county adopted the fire code with local amendments.

Vice Mayor Livengood suggested the Fire Marshal speak with the resident who had comments, separately from the meeting to discuss and further answer his questions.

(1) Motion: to close the Public Hearing

Motion/Second: Councilmember Polanski/Vice Mayor Livengood

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

(2) Motion: to adopt Resolution No. 7712 citing Findings of Fact to amend portions of the Fire Code

Motion/Second: Councilmember Polanski/Councilmember Gomez

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

City Attorney Ogaz read aloud the title of the fire code: “An Ordinance of the City Council of the City of Milpitas Amending Chapter 300, Title V of the MMC Related to Fire Code.”

(3) Motion: to waive the first reading beyond the title of Ordinance No. 113.21

Motion/Second: Vice Mayor Livengood/Councilmember Polanski

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

(4) Motion: to introduce Ordinance No. 113.21

Motion/Second: Vice Mayor Livengood/Councilmember Polanski

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

(5) Motion: to adopt Resolution No. 7713, setting forth the Fire Department Penalty Fee schedule for Certain Violations of the Milpitas Fire Code

Motion/Second: Vice Mayor Livengood/Councilmember Polanski

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

(6) Motion: to continue the vote on the resolution for fee adjustments to the next City Council meeting

Motion/Second: Vice Mayor Livengood/Councilmember Polanski

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

2. Adopt Two Year Funding Priorities for Community Development Block Grant funds

Principal Housing Planner Felix Reliford reported on the Council priority setting regarding the City's expenditure of Community Development Block Grant (CDBG) funds. The Community Advisory Commission had reviewed and recommended the two-year funding priorities and policy amendments.

Councilmember Giordano inquired, when listing the various priorities for Public and Non-Public services, were they in order as listed and staff responded affirmatively.

Mayor Esteves opened the Public Hearing, and no comments were heard.

(1) Motion: to close the public hearing

Motion/Second: Councilmember Giordano/Councilmember Polanski

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

(2) Motion: to approve the CDBG Two-Year (2009-2011) Funding Priorities and two policy amendments, as recommended by the Community Advisory Commission, including 5 Public Service priorities, 3 non-Public Service priorities and amendments regarding Recreation programs and Housing services for low-income residents

Motion/Second: Councilmember Giordano/Councilmember Polanski

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

3. Prop. 218 Hearing for Water, Recycled Water and Sewer Rate Increases and Proposed Ordinance

This topic and public hearing was removed from the agenda in the vote taken earlier on approval of the agenda for the meeting.

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 8:32 PM.

RA 2. ROLL CALL

PRESENT: Mayor/Chair Esteves, Vice Mayor/Vice Chair Livengood, Agency/Councilmembers Giordano, Gomez and Polanski

ABSENT: None

RA 3. MEETING MINUTES

Motion: to approve the Redevelopment Agency minutes of October 16, 2007, including joint meeting with the City Council, as submitted

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

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

RA 5. Progress Report on Library and North Main St. Streetscape Projects

Special Projects Manager Steve Erickson provided an update on the new library construction project, which was on schedule. He alluded to the 24 days/12 days delay on the construction work schedule and how time would be made up by the construction contractor. Only one rain delay day was used to date and it would not effect the overall completion date for the new library. Staff noted the signage plan was being developed.

The N. Main Streetscape project was reviewed, providing updated construction costs and expenses. 14.7% of change order contingency was used, with 47% of project complete.

Councilmember Giordano asked about change orders used so far on the garage (34%) while construction is 100% completed. Staff responded that job was complete.

Mayor Esteves asked about any surplus of project funds, and staff responded the City would know more later on.

(1) Motion: to note receipt of the oral staff report by Mr. Erickson

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

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

*** RA 6. City Investment Portfolio Status Report**

Received the investment report for the quarter ended September 30, 2007.

*** RA 7. Certificate of Completion for Certain Residential Units for KB Home Project No. 3160**

Authorized the Agency Executive Director to execute this Certificate of Completion, pertaining to certain residential units (described on the Certificate of Completion document), for KB Home Terra Serena Project No. 3160, subject to approval of the City Attorney as to form.

*** RA 8. Agreement with Bellecci & Associates for Corporation Yard Canopies**

Authorized the Agency Executive Director to execute the agreement with Bellecci & Associates, Inc. for the Corporation Yard Canopies, Project No. 8183 in the amount of \$81,170, subject to approval as to form by the City Attorney.

*** RA 9. Contract Agreements for Professional Financing Consulting Services with Economic & Planning Systems**

Authorized the Executive Director to execute a contract with Economic & Planning Systems to prepare a Financing Plan for the Transit Area Specific Plan, in an amount not-to-exceed \$98,520, and appropriated \$98,520 from Redevelopment Agency funds to the City's Planning Division operating budget.

RA 10. ADJOURNMENT

Chair/Mayor Esteves adjourned the Redevelopment Agency meeting at 8:40 PM.

REPORT OF MAYOR

One item was approved on the consent calendar.

ORDINANCES

5. Adopt Zone Change Ordinance No. 38.774, Resolution and Affordable Housing Regulatory Agreements for the Fairfield Murphy Ranch Development

Three ordinances were adopted on the consent calendar.

This matter was removed from the Consent Calendar and was heard prior to the Redevelopment Agency meeting.

Motion: move to approve and adopt all actions recommended by staff including:

1. Adopted Resolution No. 7714 approving Planned Units Development No. PD2007-4, Tentative Map No. MA2005-7 and "S" Zone No. SZ2005-12.
2. Waived the second reading of Ordinance No. 38.774.
3. Adopted Ordinance No. 38.774 for Zone Change No. ZC2005-11.
4. Approved two affordable housing Regulatory Agreements: one for 285 townhomes (ownership) and 374 apartments (rental units).

Motion/Second: Vice Mayor Livengood/Councilmember Giordano

Motion carried by a vote of:

AYES: 3

NOES: 2 (Esteves, Polanski)

RESOLUTION

One resolution was adopted on the consent calendar.

BIDS AND CONTRACTS

Four items were adopted on the consent calendar.

ADJOURNMENT

Mayor Esteves adjourned the Council meeting adjourned at 8:40 PM.

The foregoing minutes were approved by the Milpitas City Council as amended on November 27, 2007.



 Mary Lavelle
 City Clerk