

**MEETING MINUTES
CITY OF MILPITAS**

Minutes of: Regular Meeting of Milpitas City Council
Date: Tuesday, September 2, 2008
Time: 6:30 PM
Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas

ROLL CALL

Mayor Esteves called the meeting to order at 6:30 PM.

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

ABSENT: Councilmember Giordano was not present at the roll call, and arrived at 6:35 PM.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene to Closed Session for discussion of one issue: Milpitas Mills L.P. v. City of Milpitas, Milpitas Redevelopment Agency, et al.

City Council convened in Open Session at 7:00 PM.

**CLOSED SESSION
ANNOUNCEMENT**

None

PLEDGE

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

INVOCATION

Mayor Esteves offered a prayer for all.

MINUTES

Motion: to approve the minutes of August 19, 2008 City Council meeting, as submitted

Motion/Second: Councilmember Polanski/Councilmember Giordano

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

SCHEDULE OF MEETINGS

Motion: to approve the Council Calendars/Schedule of Meetings for September

Motion/Second: Councilmember Polanski/Vice Mayor Livengood

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

PRESENTATION

Mayor Esteves issued a special welcome to a visiting delegation from the Philippines – from the Province of Nueva Vizcaya, led by Governor Luisa Lloren Cuaresma. Mayor Esteves presented a Key to the City to the Governor and visiting delegation, who in turn greeted all Milpitas officials.

Mayor Esteves provided a Key to the City to Mr. Munishree Lokesh representing Ahimsa Vishwa Bharti, who was visiting the Milpitas Jain Center, from India. He thanked the Mayor and citizens of Milpitas for a warm welcome upon accepting the key.

PUBLIC FORUM

None

ANNOUNCEMENTS

Vice Mayor Livengood recently attended the final summer swim meet of the Milpitas Tidal Waves, and spoke with parents about vision for the future of the program, and they appreciated the Mayor's leadership on the full-time swim coach issue.

Mayor Esteves reported that he had spent some time walking around the City recently, and noted a need for some work on crosswalks where those may not be compliant with the Americans for Disabilities Act regulations. Some sidewalks had elevated cement curbs, so he requested staff to review sidewalks, especially when the City was encouraging pedestrians.

ANNOUNCEMENT OF CONFLICT OF INTEREST

None

APPROVAL OF AGENDA

Motion: to approve the agenda, as amended

Councilmember Giordano requested to hear Item No. 5 after Public Hearings

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 amended

City Attorney Ogaz requested Items No. 3 and No. 8 be placed onto consent calendar, noting that both items required a 4/5 affirmative vote.

Mayor Esteves commented on Item No. 7, on his letter to the state legislature, there was discussion of single-use only plastic bags at a County Commission.

Motion/Second: Councilmember Gomez/Councilmember Giordano

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

* 3. Emergency Action on Water Intertie at I-880

By a four-fifths vote, continue to find the existence of an emergency situation requiring emergency action for response and repair of the emergency water intertie crossing on I-880 between Dixon Landing Rd and McCarthy Blvd, pursuant to Section 22050 of the Public Contract Code.

*4. Commission Appointments

Approved the following appointments recommended by Mayor Esteves:

Community Advisory Commission:

Appointed Viramrinder Meharu as a regular member to a term that expires in Jan. 2012.
Appointed Rajeev Madnawat as a regular member to a term that expires in January 2012.
Appointed Nika Ma Chen as Alternate No. 1 to a term that expires in January 2009.
Newly appointed Phong Nguyen as Alternate No. 3 to term that expires in January 2010.

Economic Development Commission:

Appointed Minh Nguyen as commercial Real Estate representative o a term that expires in April 2011.
Appointed Zeya Mohsin as Alternate No. 1 to a term that expires in April 2009.
Newly appointed Chandru Bhambhra as Alternate No.2 to a term to expire in April 2010.

Senior Advisory Commission:

Appointed Bernice Wrinkle as regular member to a term that expires in December 2009.
Appointed Estrella Gilana as Alternate No. 1 to a term that expires in December 2009.
Newly appointed Karen Adams as Alternate No. 2 to a term that expires in Dec. 2008.

Sister Cities Commission:

Re-appointed Mr. Dana Arbaugh as Alternate No.1 to a term that expires in Sept. 2010.

Telecommunications Commission:

Re-appointed Idrees Munir a term that expires in January 2010.

Youth Advisory Commission:

Re-appointed Richard Albana to a term that expires in September 2009.
Re-appointed Sareen Sandhu to a term that expires in September 2009.
Appointed Ryan Ng as a regular member to a term that expires in September 2009.
Appointed Brian Leon as a regular member to a term that expires in September 2009.
Appointed Lovin Cortez as a regular member to a term that expires in September 2009.
Newly appointed Anthony Vu to a term that expires in September 2009.
Newly appointed Dilpreet Khalsa to a term that expires in September 2009.
Newly appointed Jennifer Shen to a term that expires in September 2009.
Newly appointed Patricia Do to a term that expires in September 2009.
Newly appointed Audrey Frey as Alternate No. 1 to a term that expires in Sept. 2009.
Newly appointed Samuel Lai as Alternate No. 2 to a term that expires in Sept. 2009.

*7. Letter from Mayor Supporting Senate Bill 1625

Approved a letter for the Mayor’s signature supporting Senate Bill 1625, expanding California’s Bottle/Can Recycling Law.

*8. Resolution Delegating Authority to the Director of Public Works to Take Action

By a four-fifths vote, adopted Resolution No. 7779 delegating to the Public Works Director the authority to make emergency repairs or replacements to public facilities without soliciting competitive bids. Authorized payment of \$60,168.89 to Preston Pipeline for an emergency repair.

*9. Authorize the City Engineer to Execute a Contract Change Order with J&M, Inc.

Authorized the City Engineer to execute a contract change order with J&M, Inc., in the not-to-exceed amount of \$50,000. for Sewer Deficiency and Structural Correction Program, Project No. 6073.

*10. Authorize Change Order No. 6 with DeSilva Gates

Authorized the City Engineer to execute contract change order No. 6 for Street Resurfacing 2008, Project No. 4242, with DeSilva Gates Construction in the not-to-exceed amount of \$140,000.

*11. Authorize Amendment No. 2 to the Agreement with Sugimura Finney Architects

Authorized the City Manager to execute Amendment No. 2 to the Agreement with Sugimura Finney Architects for the Tasman Extension – Great Mall Parkway to I-880, Project No. 4133, in the amount not-to-exceed \$375,708, subject to approval as to form by the City Attorney; and. approve Budget Appropriation, in the amount of \$260,000, from the Recycled Water Fund to the Tasman Extension – Great Mall Parkway to I-880, Project No. 4133.

PUBLIC HEARINGS

1. Entertainment Event Permit for St. John the Baptist Catholic Church

City Clerk Mary Lavelle presented the request from St. John’s Church to host once again its annual Autumn Festival over the third weekend in September. All departments had reviewed the application and she received the updated insurance certificate on this date. Also, the owner of the Serra Center property had provided written approval to allow parking at that facility for those attending the Church Festival.

Mr. Lanh Tran Tu was present representing St. John and the festival committee. He answered a question about traffic flow and parking from Vice Mayor Livengood.

Mayor Esteves opened the public hearing for comments and none were heard.

(1) Motion: move to close the public hearing

Motion/Second: Vice Mayor Livengood/Councilmember Gomez

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

(2) Motion: to approve Entertainment Event Permit No. 2008-6

Motion/Second: Vice Mayor Livengood/Councilmember Giordano

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

2. Transit Area Specific Plan –
Actions related to Development
Fees

Planning Director James Lindsay introduced actions related to fees to be established for the Transit Area Specific Plan development projects.

Future fee adjustments would occur, with periodic adjustment every 3 to 5 years. Two City ordinances were requested, the first one for minor amendments to the existing development impact fee and the second one to adjust sewer capacity fees.

Mr. Lindsay introduced staff from consultant Kimley Horn, who was present to answer any questions from the Council.

Vice Mayor Livengood commented on a letter received from Berg & Berg. It was distributed on the dais, and thus he did not have enough time to read it and possibly respond.

Mayor Esteves asked about the matter of a new school getting built in the Transit Area and where would that fit into the fee schedule. Mr. Lindsay noted that school costs fall under SB50 law. City Attorney Ogaz responded that the City had no discretion on fees for schools under that law.

Mayor Esteves next opened the public hearing for comments and none were heard.

(1) Motion: move to close the public hearing

Motion/Second: Councilmember Gomez/Councilmember Giordano

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

Vice Mayor Livengood noted one aspect that made the plan work was the \$200 million in fees to be collected for infrastructure needs, and thus the burden would be shared in an equitable fashion. It was fair from his point of view. With the plan, fees would go up as costs increased over the years.

Mayor Esteves believed this was a good planning gesture. The fees allowed for providing the minimum City services in that area.

(2) Motion: to adopt Resolution No. 7778 establishing the fee schedule for the Transit Area Development Impact Fee

Motion/Second: Vice Mayor Livengood/Councilmember Gomez

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

(3) Motion: to waive the first reading beyond the title of Ordinance No. 277

City Attorney Ogaz read the title of the ordinance, “An Ordinance of the City Council of the City of Milpitas Amending Chapter 4, Title VIII of the Milpitas Municipal Code Related to Fees for New Development.”

Motion/Second: Vice Mayor Livengood/Councilmember Gomez

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

(4) Motion: to introduce Ordinance No. 277

Motion/Second: Vice Mayor Livengood/Councilmember Gomez

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

(5) Motion: to waive the first reading beyond the title of Ordinance No. 208.43

City Attorney Ogaz read the title of the ordinance, "An Ordinance of the City Council of the City of Milpitas Amending Title VIII, Chapter 2, Section 7.04 of the Milpitas Municipal Code, Relating to Treatment Plant Fees."

Motion/Second: Vice Mayor Livengood/Councilmember Gomez

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

(3) Motion: to introduce Ordinance No. 208.43

Motion/Second: Vice Mayor Livengood/Councilmember Giordano

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

UNFINISHED BUSINESS One item was placed onto the Consent Calendar.

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 8:26 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 minutes of August 19, 2008 as submitted

Motion/Second: Agency/Councilmember Polanski / Agency/Councilmember Giordano

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

RA 4. Agenda Approval and Consent Calendar Motion: to approve the agenda and consent calendar items (*)

Motion/Second: Agency/Councilmember Giordano / Agency/Councilmember Polanski

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

RA 5. Update Report on New Library, Parking Garage and N. Main Streetscape projects CIP Manager Steve Erickson provided the elected officials with an oral progress report on the new Milpitas Library and North Main Streetscape Projects. He updated agency members on the progress of the nearly completed City's new library building on N. Main St. Contractor remained on scheduled and on budget. He reviewed Contract Change Orders for the furniture packages.

Staff presented Historic Grammar School directional signs that would be posted in the new library in that part of the building.

On this issue of a driver-side book drop at back of the library, he wrote and distributed a written memo to the City Council/Agency addressing this subject. There were cost and maintenance issues, which library staff found contributed to why none was planned for the new library. Mr. Erickson noted that such drop boxes could be added in the future.

Photographs of current work were displayed, showing construction progress.

Staff reported that the Library Subcommittee recommended the date of January 5, 2009 as a soft opening of the new library and Saturday, January 10, 2009 as the dedication ceremony. Mayor Esteves corrected that to state he only asked to bring the matter to the City Council, while Vice Mayor Livengood recommended those dates.

Councilmember Polanski asked when the building would be done and all books moved in and stored. Staff reported construction would be completed by the end of November, then library staff and books would need to be moved in during 6-7 weeks into the middle of December, for final completion prior to opening. Ms. Polanski noted this was the people's building and despite holidays, with students home at that time, if library was ready, her view was it should open up for service.

Councilmember Giordano noted a discussion at the Public Art Committee about moving the cartwheeling children sculpture from the front lawn of City Hall to the front of the new Library. City Manager Williams responded that the focus was to get the library open, and then later bring to Council the cartwheels matter. Ms. Giordano also asked about the historic Fire Truck status in the parking garage and staff replied the railing was to be readied in January.

Vice Mayor Livengood was pleased that the City finally resolved the fire truck issue and said thanks to all who cooperated on it. He was not opposed to having a soft opening sooner than January 5, if Library staff was ready.

Mayor Esteves was concerned for the budget amount of \$45,000 for the grand opening ceremony and suggested half of that cost, since the City was in difficult economic times. He questioned the date for the move-in to the new library.

Councilmember Gomez had no problem with the budget for the opening ceremony. He wanted to invite as many from the community as possible to attend on that January 10 date. He even was even willing to spend more, if needs arose.

Motion: to receive the staff report on construction progress on the new library and N. Main streetscape, and approve two dates for the Monday, January 5, 2009 as the soft opening and Saturday, January 10, 2009 as the grand opening and dedication ceremony date, *and* if the date to open could be earlier, to report back to the Library Subcommittee and the City Council

Speaker:

Craig Donnelly, resident, spoke to the Council and read aloud a letter he wrote, representing some in the community. He wanted placed on the Council agenda an action to move the ribbon-cutting ceremony for the Library to be held in the fall of 2008, when Mayor Esteves was still in office.

Vice Mayor Livengood commented to Mr. Donnelly that the library would not be ready in November, so Council could not schedule a ribbon-cutting when the building was not done. He further commented that the Mayor was not the only one who supported past ballot measures to help acquire funding for the new Milpitas Library project.

Councilmember Gomez termed Mr. Donnelly's letter as "political pandering at its best." He felt that would be rushing projects to get things done just to satisfy politicians.

Mayor Esteves allowed for speakers on this topic.

Speaker:

Ola Hassan, 350 Vista Ridge Drive, was against having two types of openings for the new library. He felt the City should make it like a business and for now, to schedule a tentative date for the grand opening only.

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

Motion carried by a vote of:

AYES: 4

NOES: 1 (Esteves)

RA 6. City Unaudited Financial report for end of FY 2007-08

Finance Director Emma Karlen presented the year end audit report. On the revenue side of the City's General Fund, she reported \$56.17 million in the amended budget v. \$55.07 million in the actual budget, with the variance of \$1.10 million. On the expenditure side, she reported \$72.98 in the amended budget v. \$68.01 million in the actual budget, with a variance of \$4.97 million.

The change in General Fund balance was \$2.1 million, \$72.98 million budgeted v. \$68.01 million actual in the fund. There was \$20.69 million in current year General Fund reserves balance (\$15.26 undesignated and \$5.43 for PERS rate stabilization), which nearly matched the amount in the previous fiscal year.

Of course, Ms. Karlen noted significantly, that, at this point, it was unknown what would happen with State of California budget, and whether money for cities would be withheld.

Councilmember Giordano asked if the Redevelopment Agency payment was solely interest only and staff replied yes.

Vice Mayor Livengood asked if all City departments' spending had come in under budget and staff replied yes. The Vice Mayor noted the high level of public service provided by City staff, acting conservatively. He was embarrassed by the continued budget arguments at the state level.

Mr. Livengood was concerned about revenues from sales and other retail tax. City Manager Williams responded that there was a decline in business-to-business tax in Milpitas. The Finance Director reported that retail tax was holding up pretty well, including from the new car dealership, but other areas slowed down due to the general construction slow down in the economy. For the current FY, projected was \$16.7 million in sales tax. Mr. Livengood asked about building permits for next year and whether those were down this year. Staff said that compared to last year, a lot more projects were being completed - such as KB Home - while this year, there was a slow down in housing construction. Further, the City Manager reported that three major approved projects had been put on hold in the current year.

Mayor Esteves inquired about City Council budget savings. Ms. Karlen responded that first, the Council had a travel budget that was not utilized, and a community promotions line item that was not all spent. Some salaries and benefits savings were realized when Council members used their own health insurance plans.

The Mayor next asked about the Fire Department as one that was at 100% of its budget, when the request was to get to only 98% of budget. Ms. Karlen explained that it was due primarily to the fact that the Fire staff had more cashout payments upon recent retirements that were not budgeted in advance, in addition to some seasonal overtime costs for out-of-City fire response.

Motion: to receive from staff the Unaudited Financial Status Report for the Fiscal Year ended June 30, 2008

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

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

*RA 7. Approve Fiscal Year 2007-08 Year End Budget Adjustments

Approved eight Fiscal Year 2007-08 year-end budget appropriations and transfers (itemized in the budget change form) requested by staff.

*RA 8. FY2008-09 Final Budget and Final CIP

Received the Final Budget for FY 2008-09 and the 2008-2013 Capital Improvement Program.

*RA 9. Approve Three Certificates of Completion for KB Home residential project

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

RA 10. ADJOURNMENT

Chair/Mayor Esteves adjourned the Redevelopment Agency meeting at 9:08 PM.

REPORTS OF OFFICERS

5. Public Art Program

This item was heard following the Public Hearings.

Economic Development Manager and staff liaison to the Public Art Committee Diana Whitecar reported to the City Council about recent discussions of the Arts Commission and the Public Art Committee. She had spent much time since budget meetings talking to members individually and as groups about their future composition. The group had recommended a proposed new make-up of the Public Art Committee, which Ms. Whitecar introduced. That recommendation included reducing to three the number of Arts Commissioners to serve on the PAC.

Public Art Committee Vice Chair Harriet McGuire and Arts Commissioner Robin Hays were both present.

The City Council, the Commissioners and staff engaged in conversation about a variety of possibilities for make-up of the Public Art Committee, its meeting time, purpose of a smaller versus larger number of members, and ways to make meetings run efficiently.

(1) Motion: to support the members' recommendation to change the composition of the Public Art Committee (as staff had presented)

Motion/Second: Councilmember Giordano/Vice Mayor Livengood

Mayor Esteves voiced his opposition because the proposed change would not solve the attendance and/or meeting time problems. He preferred more Arts Commissioners on the PAC, as currently existed.

Motion failed on a vote of: AYES: 2 (Giordano, Livengood)
NOES: 3

(2) Motion: to combine the Public Art Committee and the Arts Commission as one body, to include all existing members from both groups

This action was moved by Councilmember Giordano, and no second to her motion was heard, so no vote was taken.

Mayor Esteves recommended that presently, the bodies should remain status quo, until

more improvements were reached regarding the meeting start times, logistics and workload were improved. Arts Commissioner Robin Hays felt the two bodies could work it out and coordinate better.

Councilmember Polanski suggested that Council might take a look at how the Committee and the Commission were staffed, and perhaps only one person should handle both entities for better continuity.

(3) Motion: to maintain the current existence and membership composition of both the Public Art Committee and the Milpitas Arts Commission, and to report back to the City Council in six months on the progress of meeting time, logistics and workload

Motion/Second: Mayor Esteves/Councilmember Gomez

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

NEW BUSINESS

6. Accounts Receivable Write-offs

One item was approved on the consent calendar.

Finance Director Emma Karlen explained that the accounts listed were outstanding more than one year, staff had exhausted all collection methods, and the City did not wish to overstate the amount of assets. She discussed some of the additional collection efforts made. Now, the City no longer accepted personal checks for one-time fees (customers could pay by means of cash, money order, cashier check, credit or debit card). Helpfully, also, DUI cost recovery was transferred to the County District Attorney's office.

She reported that staff proposed to come back in the future regarding payments related to enforcement of the Neighborhood Beautification Ordinance.

The total amount of the write-off was \$86,017.58 (following the City Council's motion noted below).

Vice Mayor Livengood questioned staff on the NBO fees, did the City know all those persons had moved from Milpitas? He suggested the City could go to small claims court on property owners if they were still in town. He asked staff to look into one amount due for \$3100, in particular.

Motion: to approve FY 2006-07 Accounts Receivable write-off amounts due to the City, with removal of Neighborhood Beautification Ordinance-related payments from the list presented, yielding a new write-off total amount of \$86,017.58. Included in the motion was direction to staff to pursue those who still resided in Milpitas and owed NBO-related amounts, and if no payments were received, to go to small claims court for collection.

Motion/Second: Vice Mayor Livengood/Councilmember Giordano

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

RESOLUTION

One resolution was adopted on the consent calendar.

BIDS AND CONTRACTS

Three items were approved on the consent calendar.

ADJOURNMENT

Mayor Esteves adjourned the Council meeting at 9:20 PM.

The foregoing minutes were approved by the Milpitas City Council as submitted on September 16, 2008.


Mary Lavelle, City Clerk