

**MEETING MINUTES
CITY OF MILPITAS**

Minutes of: Regular Meeting of Milpitas City Council
Date: Tuesday, April 21, 2009
Time: 7:00 PM
Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas

ROLL CALL

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

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

ABSENT: Councilmember Gomez was not present at roll call, and arrived at 7:22 PM.

PLEDGE

Boy Scouts Troop No. 92 presented the colors and led all in the Pledge of Allegiance.

INVOCATION

Councilmember Giordano introduced Mr. Minjhing Hsieh, Executive Director of the Tzu Chi Foundation USA, who provided the invocation.

MINUTES

Motion: to approve the City Council meeting minutes of March 31, 2009 Joint Meeting with the Milpitas Unified School District Board and the regular April 7, 2009 City Council meeting

Motion/Second: Councilmember Giordano/Councilmember Polanski

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

SCHEDULE OF MEETINGS

Motion: to approve Council Calendars/Schedule of Meetings for April and May

Motion/Second: Councilmember Polanski/Councilmember Giordano

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

PRESENTATION

Mayor Livengood proclaimed "National Garden Month" for the month of April, with members of the Green Thumbs Garden Club present to accept the proclamation and celebrate this special month. Linda Worth, President of the Green Thumbs Garden Club, addressed the Council, noting theirs was one of the oldest clubs in the City.

PUBLIC FORUM

Ms. Margie Stephens, discussed the status of Sinnott Park after the recent Easter Egg hunt held. It needed to be cleaned up after the church disposed of Easter candy and trash. Other cities have deposits on park rentals and Milpitas should do that, too.

Mr. Rob Means, 1421 Yellowstone, on behalf of Sunnyhills Neighborhood Association, wanted support for a PRT feeder system. When there would be a connection between the two ends of town, his group would send out a link to the website. He asked Council to look at information he will send to Commissioners. There was a multi-choice question at the end of the information.

Two Irvington High School students from Fremont addressed the City Council requesting support for state Senate Bill 55 to increase the coverage of beverage container sizes for cash recycle value (to include those containers in CRV). The two young men requested the Mayor and Council to write letters of support to Senator Corbett and Assemblymember Torrico.

ANNOUNCEMENTS

Councilmember Giordano congratulated Milpitas Police Department staff upon their awards presented at a special luncheon the previous day. She also congratulated Mayor Livengood for reaching ten years service in the reserve police force.

ANNOUNCEMENT OF CONFLICT OF INTEREST

None

APPROVAL OF AGENDA

Motion: to approve the agenda as submitted

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

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

Councilmember Gomez arrived in the Chambers at 7:22 PM.

CONSENT CALENDAR

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

Councilmember Polanski requested Items No. 10 and No. 16 be removed from consent.

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

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

* 8. Remove CAC Alternate Voted to remove Bella Sangalang as Community Advisory Commission Alternate No. 3, creating a vacancy to expire in January 2010.

* 9. Remove YAC Alternate Voted to remove Katherine Pita as Youth Advisory Commission Alternate No. 4, creating a vacancy to expire in September 2010.

*13. Youth Sports Assistance Fund Grant Approved funding one Individual Youth Sports Assistance Fund grant of \$500 to Alexa Cacao.

*14. Dispose Five Vehicles Authorized the Purchasing Agent to auction five surplus Ford vehicles.

16. Adopt Ordinance No.23.12 Waived the second reading and adopted Ordinance No. 38.789 for Zoning Amendments by reformatting the Commercial and Industrial Sections, removing assembly uses not associated with businesses as conditional uses within the industrial districts, and adding ancillary text amendments for internal consistency.

*17. Two Resolutions for Centria East and Centria West Centria East: adopted Resolution No. 7859 granting initial acceptance and authorizing reduction in the penal sum of the subdivision improvement bond to \$33,750 for Tract No. 9773, Lot 2, Centria East Condominiums, Project No. 3178.

Centria West: approved the public improvement plans and specifications for the Centria West Project; and, adopted Resolution No. 7860 approving and authorizing the City Manager to execute the subdivision improvement agreement for Tract No. 9773, Lot 1, Centria West Condominiums, Project No. 2568.

*18. Annual Agreements with County for Collection of AB 939 Fees and Household Hazardous Waste Collection Program Authorized the City Manager to execute annual agreements with the County of Santa Clara for collection of AB 939 Implementation Fees and for administering the County wide Household Hazardous Waste Collection Program.

*19. Bid Award for McCarthy Ranch Plant Replacement Awarded bid and authorized the City Manager to execute contract for McCarthy Ranch Plant Replacement to Commercial Environmental Landscape for amount not-to-exceed amount \$30,482 including sales tax, subject to approval as to form by the City Attorney.

*20. Agreement with Milpitas Community Television

Authorized the City Manager to execute an agreement with Milpitas Community Television (MCTV) for the operation of the public access studio and channel.

*21. Bids for Storm Drain Installation Project No. 3700

Approved plans and specifications, and authorized advertisement for bid proposals for the Storm Drain Installation at Country Club Drive, Project No. 3700.

PUBLIC HEARINGS

1. Community Development Block Grant Funding

Neighborhood Specialist Gloria Anaya addressed Councilmembers with details of this year's Community Development Block Grant funding program. \$579,000 in funding was allocated for CDBG in Milpitas for the next Fiscal Year 2009-10, with 15% for public services, 65% for non-public services, and 20% for program administration. That total represented a 23% decrease in funding from the prior highest year funded for the City.

Staff reported that the Community Advisory Commission reviewed all applications on March 4 and recommended funding amounts in seven categories (with no applications for rental apartment rehabilitation).

Positively, staff reported an additional \$157,293 in increased CDBG funds was due from the President's American Recovery and Re-investment Act, to be allocated for the City of Milpitas, in stimulus money.

Housing Planner Felix Reliford next addressed the Council on the one-year Action Plan, required by the federal U.S. Housing and Urban Development Department, to define what activities would be accomplished with the funding.

Councilmember Giordano asked if there was any accountability once funding was given to the groups. Staff explained a slew of requirements of the agencies, described the contract with each agency developed and signed onto, and including required written quarterly reports along with City staff in-person visits to each agency.

Mayor Livengood then opened the public hearing.

Speakers:

1. **Bob Campbell**, Director of Senior Housing Solutions, displayed homes that had been improved for senior living in single family residences. Currently, SHS was working on its second project in Milpitas. As the process moved forward, he urged Council to think about the US Reinvestment Act, and rehabilitation funds would help his organization with the next house improvement. All seniors residing in the first Milpitas home were very happy living there.
2. **Yolanda Ungo**, of Catholic Charities, thanked the City Council for their support over the years. Now more than ever, her organization was helping residents who had been put out of homes and needed affordable housing.
3. **Kathleen King**, Santa Clara Family Health Foundation, requested money for the healthy kids program, but were denied for funding in the Commission's recommendations. She still sought funds from various governments and agencies to provide healthcare coverage for young children. The county funded some, the City of San Jose did fund an amount, and she was asking Milpitas to add to its budget to serve young children in Milpitas.
4. **Gary Taylor**, Dixon Landing Rd. resident, representing Milpitas Food Pantry, noted that in the past decade about 350 families per month were served by Food Pantry. However, lately it was up to 450 per month with the down economy, and were trying to get as much food as possible to distribute to needy families.

Mayor Livengood acknowledged the good work of all the local agencies that applied for CDBG funds. Also, he mentioned the recent contribution of \$1,500 to the Milpitas Food Pantry from the City of Milpitas at the annual Commissioners' recognition event

5. **Todd Flesner**, representing Rebuilding Together, was working with low income and disabled homeowners to keep up their homes and not lose them. He offered thanks to the City Council for its continued support.
6. **Georgia Bacil**, San Jose resident, was representing SALA which offered legal assistance for seniors, at the Milpitas Senior Center twice monthly, a very needed service to the seniors in Milpitas.
7. **Arlene Crawford**, representing Live Oak Senior Day Care services, came to thank the City Council for support over the years. Her non-profit helped frail seniors in need of extra care, and several come from Milpitas to the nearby center in San Jose.

(1) Motion: move to close the public hearing

Motion/Second: Vice Mayor McHugh/Councilmember Gomez

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

Mayor Livengood commented that the Community Advisory Commission did a great deal of work on this and he appreciated that. He wanted to consider the Santa Clara Family Health Foundation to fund the good work of this group.

Motion: move to fund SCFHF Healthy Kids program in the amount of \$10,000 by reducing funds for the City of Milpitas Recreation Assistance Program

Motion/Second: Vice Mayor McHugh/Councilmember Gomez

Councilmember Gomez supported the Vice Mayor's motion. RAP was a very popular program and many depend on it. So, he proposed to bring back the financial needs of the RAP program at budget time next month, to keep it a whole program.

Councilmember Polanski offered support for all the worthy groups presented in the recommendation. Meanwhile, the Filipino Youth Coalition was not present at the March Community Advisory Commission public hearing, so she wanted to move \$5,000 from that application to the Healthy Kids program. She wanted to know if the Council's policy was to fund an amount of money toward City-sponsored programs (RAP was only one of those).

Mr. Reliford explained that every two years, staff asked the City Council to determine priorities for funding. In 2007-08, 25% of public service funds were determined to go for City services from the CDBG funds. He noted that the City Council had deviated from that policy from time to time.

Councilmember Giordano asked if staff recommendations were the same as the Commission's and staff said yes. She was not in favor of Mr. McHugh's motion to change funding recommendations by the Commission. She wanted to hold to what CAC had recommended and to find other budget areas to fund the healthy kids program.

The motion above was restated, and clarified to include a recommendation for additional funding to another applicant, and reduced funding to two of the groups v. what the Community Advisory Commission had recommended to Council.

(2) Motion: to fund \$10,000 for Santa Clara Valley Healthy Kids Foundation in the City's CDBG allocation for FY 2009-2010, reducing the recommended RAP allocation by \$5,000 and removing \$5,000 from the Filipino Youth Coalition's allocation

Councilmember Polanski wanted to move \$5,000 from the Filipino Youth Coalition whose representatives did not show up at the CAC hearing and provide those funds to the Healthy Kids program along with \$5,000 from the City's RAP allocation. She would suggest the Filipino group come back to be re-considered when the stimulus funds become available.

Vice Mayor McHugh agreed with the recommendation offered by Councilmember Polanski in order to fund \$10,000 for the Healthy Kids program.

Councilmember Gomez asked staff about when the additional stimulus CDBG funds would be available, and staff reported that was unknown at this time.

The motion and second by Mr. McHugh and Mr. Gomez was repeated.

Motion/Second: Vice Mayor McHugh Councilmember Gomez

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

(3) Motion: to approve the funding for all the CDBG allocations (including amendments recommended by Vice Mayor McHugh and approved) for both public and non-public services in the City of Milpitas, as recommended by the Community Advisory Commission

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

(4) Motion: to approve the one year Action Plan for CDBG grant funds

Motion/Second: Councilmember Polanski/Councilmember Giordano

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

2. Request for Bingo License for St. John the Baptist Catholic Church weekly game

City Clerk Mary Lavelle introduced the request from St. John's to host weekly bingo. The application was reviewed by all appropriate departments, to approve a new weekly Monday night bingo game, from 7:00 – 10:00 PM. The license requested was for a "regular" bingo license (i.e. not limited) so total winnings permitted were \$250 total.

Mayor Livengood then opened the public hearing, and no speakers were heard.

(1) Motion: move to close the public hearing

Motion/Second: Councilmember Gomez/Vice Mayor McHugh

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

(2) Motion: move to approve Bingo License No. 2009-3 for St. John the Baptist Catholic Church to hold a weekly bingo game at Pavalkis Hall, starting in May 2009.

Motion/Second: Vice Mayor McHugh/Councilmember Gomez

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

3. Entertainment Event Permit request from Milpitas Rotary Club for a Carnival, June 11-14

City Clerk Lavelle presented the annual request from the Milpitas Rotary Club to host a Carnival and to waive certain fees. This year, the carnival would be held at 1535 Landess Ave. (site of former Home Depot store) in the front parking lot. A layout for the traffic pattern was displayed overhead, as provided by the Traffic Engineer.

Councilmember Polanski noted that the owner of the property needed to cut down weeds all around the property, especially in front at the Landess Ave. entry points.

Councilmember Giordano asked that the existing businesses at the shopping plaza not be affected by carnival-goers parking. There should be a barrier of some kind between the parking for the carnival and the small businesses on site.

Mayor Livengood further commented on the general condition of the shopping center. He described broken lights, weeds as noted, westerly side of building should be gated off, and he was concerned about safety of the property. He pointed to the responsibility of the property owners.

Mayor Livengood then opened the public hearing.

Speaker: **Mr. Todd Flesner** from the Milpitas Rotary Club addressed the City Council, with hope that the Council would approve once again the permit for the carnival this year, benefiting many programs of the Club. He assured Council that Rotary would work with the owner on concerns raised at this meeting.

(1) Motion: move to close the public hearing

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

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

(2) Motion: to move to approve Entertainment Event Permit No. 2009-1 for the Milpitas Rotary Club to hold a carnival at 1535 Landess Ave. in Milpitas on June 11-14, 2009 and authorize the requested waiver of \$662.05 in City Building and Fire inspection fees

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

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

UNFINISHED BUSINESS

4. Report on Blighted Conditions at 1556 S. Main St.

Planning Director James Lindsay described abatement in progress at this site (a former hotel). The property owner was in violation of several zoning ordinances. He reviewed the Neighborhood Beautification Ordinance procedures, and the drafted agreement between the property owner and the City. All costs would be billed to the owner, and the property could be liened, if the property owner does not abide the terms of agreement.

Mayor Livengood asked about the time frame for the next steps. Staff replied 30 – 60 days to ultimately remove the building. The Mayor wanted it to happen sooner, since it had already been in decline for several months. The site was an unattractive nuisance, with much graffiti and trash, and possibly squatting. He wanted the quickest action.

Motion: to receive the oral report on blighted conditions at 1556 S. Main St.

Vice Mayor McHugh noted staff must follow the process outlined in the ordinance, to get authority from the property owner and after 60 days, then the City could do the abatement and recover the costs.

City Attorney Ogaz stated that the facts were not to the level identified by the Mayor yet. To allow the City to go in and tear the structure down, it must be extreme and was not supported by facts at this time. Staff must go through the processes set up in the municipal code.

Motion/Second: Councilmember Giordano/Councilmember Gomez

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

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA 1. CALL TO ORDER Mayor/Agency Chair Livengood called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 8:25 PM.

ROLL CALL **PRESENT:** Chair/Mayor Livengood, Vice Chair/Vice Mayor McHugh, Agency/Councilmembers Giordano, Gomez and Polanski

ABSENT: None

RA 2. MINUTES Motion: to approve the April 7, 2009 meeting minutes of the Redevelopment Agency

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

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

RA 3. Agenda Approval and Consent Calendar Motion: to approve the agenda and consent calendar items (*), as submitted

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

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

RA 4. Draft Capital Improvement Program City Engineer Greg Armendariz presented the five year draft Capital Improvement Program for 2009-2014. Funding was restricted for the itemized projects and cannot be used for ordinary City operations. No general funds were used for the CIP.

Mr. Armendariz highlighted the recently completed new Library and parking garage facilities in the City's mid-town as accomplishments. Also the Main Sewage Pump Station was newly re-built (at the end of life of 45 year old former pump station).

Six major categories were established for the CIP. New on the list was Calle Oriente Park re-design and resurfacing. Recycled water would be used in all the landscaping projects (some on the Streets list). Council was scheduled to visit the CIP document again on May 12 at the budget hearing meeting next month.

Vice Mayor McHugh asked about Project No. 4202, regarding sidewalks on the Calaveras Blvd. overpass. Staff explained the project would narrow auto travel lanes, and would move the sidewalk into part of the road area. Mr. McHugh further inquired about Project No. 8187, the on-ramp change to off-ramp on Carlos St. that connects Main St. to Calaveras Blvd. overpass. Staff reported it was hazardous at this time and needed to be corrected, in concert with Caltrans at the Highway 237 overcrossing.

Motion: to receive the staff report on Draft 2009-2014 Capital Improvement Program

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

Councilmember Gomez asked about the Sports Center Master Plan, and how many years out would that take the CIP. Staff needed to conclude the Parks Master Plan first, before getting to the Sports Center Master Plan. The Parks and Recreation Director provided additional comment on this topic.

Motion carried by a vote of:

AYES: 5

NOES: 0

**RA 5. Public Hearing on
Amending the Great Mall
Redevelopment Plan Area**

A Joint Public Hearing of the City Council and Redevelopment Agency was called. Mayor Livengood opened the public hearing right up front, with a stated set of guidelines for the hearing.

Economic Development Manager Diana Barnhart provided background and history of the Great Mall Redevelopment Plan area. She defined the necessary steps taken to date to amend it. She described the following documents necessary to enter into the record at this hearing:

Exhibit 1: the Affidavit of Publication of the notice of this joint public hearing, published once a week for four successive weeks in the local Milpitas Post;

Exhibit 2: the Certificate of Mailing the notice of this joint public hearing to each assessee of land, each resident and business owner in the Project Area as shown on the last equalized assessment roll of the County and the official records of the Planning Division of the City of Milpitas

Exhibit 3: the Certificate of Mailing the notice of this joint public hearing to the governing bodies of each affected taxing entity within the Project Area

Exhibit 4: the Certification of Certain Official Actions that have been taken by the City Council and the Agency in connection with the proposed Fifth Amendment.

Staff summarized the proposed Fifth Amendment. Ms. Barnhart reported that no new review committee or new Environmental Impact Report was required, so a negative declaration was prepared and had been available for public review for the 20-days period from February 16 to March 4, 2009.

No written comments were received on the plan amendment proposed in advance of the meeting, the City Clerk reported to the Council.

Mayor Livengood open the Public Hearing.

Speaker: Rob Means was concerned that there were “too many eggs going in the RDA basket.” The City was using the agency as a credit card for the City, with environmental and fiscal problems ongoing.

(1) Motion: move to close the public hearing

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

Motion carried by a vote of:

AYES: 5

NOES: 0

Councilmember Polanski asked why there was no fiscal impact statement. She asked if all taxing agencies were notified and requested staff to reiterate how and when. Staff responded, as noted earlier.

(2) Motion: adopt Joint Resolution No. 7857/RA329 of the City Council and the Redevelopment Agency adopting the Fifth Amendment to the Great Mall Redevelopment Plan and approve the Negative Declaration

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

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

City Attorney Ogaz read aloud the title of Ordinance No. 192.22 “An Ordinance of the City Council of the City of Milpitas Amending Ordinances No. 192.8, No. 192.10, No. 192.13, No. 192.17 and No. 192.19, and Approving and Adopting the Fifth Amendment to the Redevelopment Plan for the Great Mall Redevelopment Project.”

(3) Motion: to waive the first reading beyond the title of the Ordinance No. 192.22 for the Fifth Amendment to the Great Mall Redevelopment Plan

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

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

(4) Motion: to introduce Ordinance No. 192.22, for the Fifth Amendment to the Great Mall Redevelopment Plan

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

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

RA6. Agreements for Freeway Electronic Signs

Economic Development Manager Diana Barnhart provided the background on recommendation for electronic freeway advertising signs. From eight responses to a Request for Proposals issued last year, at this point, two responses were recommended by the Economic Development Subcommittee to the City Council for approval.

1) McCarthy Ranch with Clear Channel Outdoor proposal was for six total freeway signs, which could yield \$409,236 average yearly revenue. Three were recommended by the subcommittee.

2) CBS Outdoor with Milpitas Automotive Group proposal was for six total freeway signs, with possible \$608,720 average annual revenue to the City. Three were recommended by the subcommittee.

Recommended contract terms were provided, with annual revenue payments and annual percentage shares. Developers would bear all costs of design and sign installation. The final recommendation to Council came from Mayor Livengood and Councilmember Polanski at the subcommittee meeting.

Mayor Livengood asked applicants if they wanted to speak to the Council.

Tom Chadwell of Piercey Toyota gave some history, noting added benefits to the Piercey property site, and mentioned the additional dealership coming soon (Honda). He reiterated that Piercey had expectations from the beginning of its project to have five freeway signs, not three as recommended now. His company wanted four signs at least, with two on I-880 and two on I-680.

Joe McCarthy, from McCarthy Ranch with Clear Channel, commended City staff and the two subcommittees that had met on this issue. His company was pleased with the recommendation of three signs for each group. Mr. Bill Hooper, President of Clear Channel for Northern California, supported the subcommittee’s recommendation stating it was fair. The number of signs was right for the City of Milpitas and McCarthy looked forward to construction of the signs soon.

Mayor Livengood addressed what had happened with these signs. The number one priority for him was what was in the best interest of taxpayers, to maximize revenue. He liked the proposals from both groups, and it was difficult to propose on land that the two groups did not control. Piercey Toyota should be reimbursed some of the costs for its Environmental Impact Report done in the past, if in fact the company would get only half the signs originally agreed. The Mayor did not want seven signs.

Councilmember Polanski gave the point of view from the Economic Development Subcommittee. She agreed with the Mayor's suggestion on the EIR to be fair. She remained concerned for the sign on I-680, leased or owned by the Simon Group (Great Mall) and wasn't sure if it was fair to say that Milpitas Automotive Group should get that site for an advertising sign.

Vice Mayor McHugh agreed that the Mall owner and its relationship with the City had changed over the years. He agreed with the recommendation in the staff report that went to the Subcommittee, allowing up to seven freeway signs. Seven would not oversaturate, he felt. Mr. McHugh wanted modification to the Subcommittee's recommendation to allow two signs on I-880 for Piercey and two on I-680 and then three signs on the McCarthy property.

Councilmember Gomez asked the Subcommittee how six signs were determined and seven as too much. Mr. Livengood responded it was some guess work, that it was hard to figure with no magic formula, and he wanted to be fair to both groups.

Mr. Hooper, the CBS representative, had been in the business for 26 years, and it was important to find the right number of signs for the community. CBS had taken the approach of developing iconic locations for outdoor signs, and the two freeways in Milpitas, 880 and 680, fit that mold. CBS was quite sensitive to oversaturation.

Vice Mayor McHugh asked the Economic Development Director about comments in her memo about seven signs maximum. Ms. Barnhart did not feel there would be oversaturation with seven freeway signs, noted in the written report, and explained how staff tried to take into consideration both valid sign proposals from Piercey and McCarthy.

Councilmember Gomez asked staff what was the end date of the agreement for the Great Mall sign on I-680, and staff reported it would expire in June.

Mayor Livengood asked for any speakers from the audience.

Speakers:

Bill Ferguson, Milpitas resident, commented that having great big billboard signs would not be a good thing for Milpitas. He did not want to have the City look like Las Vegas. He felt such signs with video would be dangerous and cause driving accidents. Bright lights would be on all night, and be disturbing to residents nearby, as well as possibly decrease property values. He termed the potential new signs "visual blight" and irritating while compelling.

Rob Means, Milpitas resident, thought that the agreement among the Council pretty good for the signs. He asked should the City have these signs at all in this City. It was support of commercialism in our culture. The City would become known for the signs if six or seven signs go up.

Motion: to authorize the Agency Executive Director to negotiate agreements with CBS Outdoor and Milpitas Automotive Group for three electronic freeway signs and with McCarthy Ranch and Clear Channel Outdoor for three electronic freeway signs and return to Council/Agency for approval of the agreements

Motion/Second: Mayor Livengood (no second offered)

With no second offered to the motion, the motion was not voted upon.

Motion: to reconsider the recommendation of the Subcommittee for six signs, with flexibility for sign location on I-680 and not be tied to the Great Mall site (a 40 year lease) and with the costs of the Environmental Impact Report to be split

Motion/Second: Councilmember Polanski/Councilmember Gomez

Motion failed by a vote of: AYES: 2 (Polanski, Gomez)
NOES: 3

Motion: to authorize four freeway signs for the Piercey Group and three for the McCarthy Group

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

Motion failed by a vote of: AYES: 2 (McHugh, Giordano)
NOES: 3

Motion: move to continue this item to the next meeting

Motion/Second: Councilmember Gomez/Councilmember Giordano

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

At 9:41 PM, Mayor Livengood announced a five minutes break and the City Council returned at 9:50 PM.

*RA7. Execute Amendment No. 3 to Agreement with Sugimura Finney Architects for Tasman Ext. Great Mall Parkway to I880 Authorized the City Manager/Agency Executive Director to execute Amendment No. 3 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 \$80,530, subject to approval as to form by the City Attorney/Agency Counsel.

Approved a budget appropriation in the amount of \$70,000 from the Recycled Water Fund to the Tasman Extension – Great Mall Parkway to I-880 Project.

*RA8. Amendment No. 4 to the Agreement with Noll & Tam Architects for Senior Center Authorized the City Manager/Agency Executive Director to execute Amendment No. 4 to the agreement with Noll & Tam Architects for the Senior Center Project, Project No. 8176.

RA9. ADJOURNMENT Chair/Mayor Livengood adjourned the Redevelopment Agency meeting at 9:41 PM.

REPORTS OF OFFICER, SUBCOMMITTEES and COMMISSIONS

5. Report from Mayor on Possible Local Tax Measure Mayor Livengood recommended removing this item from the agenda.

Motion: move this item off the agenda and continue it to the next Council meeting

Motion/Second: Councilmember Giordano/Councilmember Polanski

Motion carried by a vote of: AYES: 3
NOES: 0
ABSENT: 2 (Gomez, McHugh)

Mr. Gomez and Mr. McHugh stepped away from the dais for a few minutes and returned shortly thereafter.

6. Rules Committee: Open Government Ordinance Amendments

City Attorney Michael Ogaz reported that the Rules Committee discussed changes in the Open Government Ordinance, and brought forward an updated version of an amended ordinance for consideration.

Vice Mayor McHugh – Chair of the Rules Committee - reviewed the written report by the City Attorney. He asked about the public records tally report, and Mr. Ogaz reported that the City Clerk could provide input on that topic. City Clerk Lavelle explained that she maintained a file of such Public Records Act requests, but no formal report to Council was prepared. Annually, she suggested her office received about a dozen such requests. Vice Mayor McHugh responded that he did wish the Council to receive some form of that tally each year.

Vice Mayor McHugh commented on the index of records requirement and asked about retention of records and presently where noted. The City Clerk responded that retention time for all City documents was maintained in the Records Retention schedule.

Mr. McHugh wanted it stated where records could be found, if not online, at City Hall. He wanted consistency in how records were noted on the City website and how and where records could be accessed. In the ordinance, he wanted sections to indicate explicitly where information could be found. City Attorney Ogaz agreed that such language could be included in the ordinance language.

The Vice Mayor asked Mr. Gomez for his comments on the ordinance, and he had none.

Following along with the City Attorney’s recommendations on the agenda, Mr. McHugh gave his recommendation to keep No. 1. On No. 2, he wanted a formal report of public records requests, and so to keep the ordinance as is. On No. 3, it was fine, since the records retention schedule contained retention times (and it must be updated this year). On No. 4, Mr. McHugh was satisfied. On No. 5, the wording needed to be consistent in Sections I 310-1.130 and 1.150, which the City Attorney agreed to edit.

City Attorney Ogaz read aloud the title of Ordinance No. 262.6 “An Ordinance of the City Council of the City of Milpitas Amending Chapter 310 of Title I of the Milpitas Municipal Code Relating to Open Government.”

(1) Motion: move to waive the first reading beyond the title of Ordinance No. 262.6

Motion/Second: Councilmember Polanski/Councilmember Giordano

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

(2) Motion: to introduce Ordinance No. 262.6 for amendments to the Open Government Ordinance and including changes requested by Vice Mayor McHugh (defined above)

Motion/Second: Councilmember Polanski/Vice Mayor McHugh

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

7. Recommendations for VTA Board Governance Structure

Traffic Engineer Jaime Rodriguez reviewed the current arrangement of the Santa Clara Valley Transportation Authority Board of Directors, in which Milpitas was grouped with the cities of Morgan Hill and Gilroy.

A new proposal was for Milpitas to be grouped with the cities of Sunnyvale and Santa Clara, with only two Board seats between the three cities. Staff re-iterated why Milpitas’ representation was so important on the VTA Board, especially with BART planned to be built in this City.

The Council's Transportation and Land Use Subcommittee and staff's suggestion was to have three board seats, not two, for the new City grouping. That would require state legislative action, however. There was need to work with others to get consistency and fair representation alternatives.

Councilmember Polanski asked about the legislation option and if there had been any action to seek such a bill in the state, she asked. Staff responded no, only discussion.

Vice Mayor McHugh asked if staff had come up with a solution. Mr. Rodriguez reported that staff was working with Sunnyvale and Santa Clara in particular, and then it would do that with the M-G-M group to come to consensus.

Motion: to receive staff report on Valley Transportation Authority Board Governance; and, moved to approve the staff recommendation for the Valley Transportation Authority Board Governance Structure (continue seeking consensus)

Motion/Second: Vice Mayor McHugh/Councilmember Gomez

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

10. Sister Cities Commission
By-Laws Amendment

Councilmember Polanski removed this item from consent simply to request whether the Council would consider looking at all Commissions to make the recommended change that was presented for the Sister Cities Commission. She felt it was something to consider for all City Commissions, where appropriate, not just for one.

Vice Mayor McHugh believed that concept had a good deal of merit, and would like to consider anyone residing in the unincorporated area of Milpitas (in Milpitas Unified School District area) to serve on a City Commission. This matter would need to come back to the City Council, since it would amend several sets of by-laws.

Councilmember Polanski pointed out that the suggested change be considered only for those Commissions that were unpaid, i.e. exclude the Planning Commission. Mayor Livengood responded that Planning Commissioners needed to be registered voters, so the recommended change would not apply to that Commission.

Motion: to adopt Resolution No. 7858 changing the By-Laws of the Sister Cities Commission to allow residents within the Milpitas Unified School District (potentially outside City limits) to serve as Commissioners

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

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

Council directed staff (City Attorney) to come back with adjustment to by-laws of all other appropriate Commissions, to permit certain residents to serve as Commissioners.

NEW BUSINESS

Two actions were approved on the consent calendar.

11. Report from Santa Clara
Valley Water District on Lower
Berryessa Creek Flood
Protection Project Alternatives

Principal Engineer Fernando Bravo introduced District Director Richard Santos, who explained why the District staff was present. The Water District sought input from the Council on alternatives for planned improvements to the Lower Berryessa Creek Flood Protection area of Milpitas. It included four waterways: Lower Penitencia Creek, Lower Berryessa Creek, Calera Creek and Tularcitos Creek.

Water District staff, Senior Project Manager Mr. Dennis Cheong, gave a project description to the Council, explaining the District needed to come up with project alternatives to deal with 100-year flood scenarios preparation. He provided graphical

displays of the flood creek channels throughout Milpitas, and was seeking input on the alternatives suggested. Flood walls and other design improvements were suggested.

Mr. Bravo commented that City of Milpitas staff agreed with the recommendations provided by the Water District staff for the alternatives, and recommended that Council offer support.

Motion: to receive a report from Santa Clara Valley Water District (SCVWD) on the Lower Berryessa Creek Flood Protection Alternatives, and state support for the district-recommended and City staff-recommended project alternatives

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

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

12. Monthly Economic Development Report

Mayor Livengood recommended that this report be considered at a later date.

Motion: to continue the monthly Economic Development report to the next meeting

Motion/Second: Councilmember Polanski/Councilmember Giordano

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

ORDINANCES

15. Ordinance No. 23.12

Purchasing Agent Chris Schroeder highlighted the proposed recommended changes to the current Purchasing section of the Milpitas Municipal Code. Change in the Local Purchasing preference policy, if adopted, offered the greatest change in the ordinance. He explained the process to further favor, under specific circumstances, local vendors.

Vice Mayor McHugh asked the City Attorney if there was any problem with the local preference policy and he replied none.

City Attorney Ogaz read aloud the title of Ordinance No. 23.12, "An Ordinance of the City Council of the City of Milpitas Amending Chapter 2 of Title I of the Milpitas Municipal Code Relating to Clarifying the Purchasing Ordinance and Amending the Local Purchasing Preference and other Purchasing Procedures."

(1) Motion: to waive the first reading beyond the title of Ordinance No. 23.12.

Motion/Second: Vice Mayor McHugh/Councilmember Gomez

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

(2) Motion: to introduce Ordinance No. 23.12 repealing Title 1, Chapter 2, Purchasing and upon adoption, amend Title Chapter 2, Sections 1 through 12

Motion/Second: Vice Mayor McHugh/Councilmember Gomez

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

16. Ordinance No. 38.789

Mayor Livengood requested speakers from the public first on this ordinance, which had been removed from the consent calendar.

Speakers:

Julio Tabliolo, representing a local church at 220 S Main St, which was renting from Spring Valley Bible Church. The speaker said his group was searching for its own facility for the church and the only area they could find a building for lease would be in the industrial area of Milpitas. He requested Council not adopt the ordinance.

Barry Fernall, San Jose resident and property owner on Los Coches in Milpitas, requested the Council to delay the vote and reconsider this ordinance. He had not received any written notice about this change. He stated it was not good enough notice given to area property owners. He wanted to read and discuss the ordinance with neighbors and city planning staff. Mr. Fernall believed it was potentially punitive to landowners, and would, for example, preclude the India Community Center from expanding in the future.

Andrew Nguyen, spoke representing a San Jose church, had been looking into renting a facility in Milpitas as a home for his church. They were currently in San Jose and were seeking a permanent location. He wanted the opportunity to seek a CUP under existing law, and not to change the current Milpitas laws.

Mayor Livengood commented on this action, noting the ordinance had already been introduced following a public hearing. It was only assembly uses in industrial areas that would be limited, just like other cities. He thought it was important to stop the creep of non-tax generating uses in the industrial base of the City.

Councilmember Gomez reminded Council he had questioned staff about projects pending, on the evening of the public hearing. Mr. Lindsay reported there were none on file in City, of those who spoke at this meeting. An alternative was that the City Attorney could have an applicable date injected into the ordinance to assist any current potential CUP applicants.

Mr. Gomez suggested possibly a “Mixed Use overlay” as done in neighboring cities, like San Jose and Fremont, might be appropriate. Staff replied that the City of Sunnyvale had a very good example of this concept.

Vice Mayor McHugh asked Mr. Nguyen to come forward so he could ask him about how close he was on terms with the property owner. The church representative said he was negotiating back and forth right now. Vice Mayor McHugh offered alternate language to suggest adding into the ordinance, regarding the date by which a Conditional Use Permit application would need to be submitted to the City, before the new ordinance took effect.

The Planning Director recommended that idea (the date specific) over the concept of an overlay district added to the zoning maps.

Councilmember Polanski asked staff when the ordinance would go into effect, and staff responded 30 days after adoption.

Councilmember Giordano inquired what was the reason for first reading and second reading of ordinances. To provide utmost notice to the public and per requirements of state law, stated the City Attorney. Mr. Lindsay commented that it was about two years since this matter was first discussed as a City issue. Mr. Ogaz noted that the ordinance only amended industrial zones, and that left all other sections of the city available to have a church or place of assembly.

(1) Motion: move to add an applicability clause to the introduced Ordinance No. 38.789 with the effective date of April 30, 2009

Motion/Second: Vice Mayor McHugh/Councilmember Gomez

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

