

**MEETING MINUTES  
CITY OF MILPITAS**

**Minutes of:** Regular Meeting of Milpitas City Council  
**Date:** Tuesday, June 2, 2009  
**Time:** 6:30 PM  
**Location:** Council Chambers, Milpitas City Hall, 455 East Calaveras Blvd., Milpitas

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**ROLL CALL**

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

**PRESENT:** Mayor Livengood, Vice Mayor McHugh, and Councilmembers Giordano, Gomez and Polanski. "Junior Mayor" Ivan Huang was also present.

**ABSENT:** Councilmember Gomez was not present at 6:30 PM and arrived a few minutes later.

**CLOSED SESSION**

City Council convened in Closed Session to discuss collective bargaining issues regarding six employee labor groups and unrepresented employees.

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

**ANNOUNCEMENT**

None from the Closed Session.

Mayor Livengood introduced Curtner School 5<sup>th</sup> grader Ivan Huang. He was a keen student of government who won the opportunity to serve with the Mayor at one City Council meeting, and was seated on the dais right next to the Milpitas Mayor.

**PLEDGE**

"Junior Mayor" Ivan Huang led all in the Pledge of Allegiance.

**MINUTES**

Motion: to approve City Council meeting minutes of May 12 and 19, 2009, as submitted

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

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

**SCHEDULE OF MEETINGS**

Motion: to approve Council Calendar/Schedule of Meetings for June, as amended

City Manager Williams noted there would be no Council meeting on June 9 and there would be no City Council meetings during the month of July.

Motion/Second: Councilmember Polanski/Vice Mayor McHugh

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

**PRESENTATION**

Mayor Livengood announced an award the City was granted by the American Planning Association - a comprehensive planning award for excellence on the Milpitas Transit Area Plan.

The Mayor invited Planning Commission Chair Cliff Williams and Planning Director James Lindsay to receive the award, read aloud by Junior Mayor Huang.

**PUBLIC FORUM**

**Isaac Hughes**, resident, felt it was sad that local government with many social ills too many to solve, neglected some actions, and commented on the direction to those who give invocations not to say Jesus in prayer, on the Council agenda. He went on to recite his own prayer.

**Arzhang Kalbali**, read in the newspaper about layoffs planned for the City of Milpitas. Mayor Livengood advised him to speak later on the agenda when the budget was discussed.

**Delia and Aurora Rodriguez**, business owners in Milpitas, were celebrating 30 years in the same location at their business "His-n-Hers Hair." They invited everyone to a celebration on Sunday afternoon from 1 – 4 pm, and wished to thank their clientele for keeping them in business.

**Thi Tran**, resident of 15 years, wished to speak on the fees related to the Milpitas Tidal Waves swim team. The Mayor advised her that it was on the agenda and to wait for that item.

## ANNOUNCEMENTS

**Vice Mayor McHugh** announced that the Sister Cities Commission entered into a friendly informal relationship with the community of Nam-gu, Incheon City of South Korea.

**Councilmember Polanski** thanked everyone who attended the very nice Memorial Day celebration held in the City on Monday, May 25, which was well done by various City staff including Police, and Parks and Recreation.

**Mayor Livengood** announced that Courter (Daniel) Simmons, a product of the City of Milpitas, was a theatre performer in New York. He would be singing on television during the Tony Awards on Sunday, June 7 on CBS.

## ANNOUNCEMENT OF CONFLICT OF INTEREST

None

## APPROVAL OF AGENDA

City Manager Williams requested, at staff's direction, to remove Item No. 1 from the agenda and the public hearing regarding fees could be heard at a later date, perhaps in August.

Vice Mayor McHugh commented that if the item was in fact removed, then members of public should be given the right to comment on it.

Mayor Livengood stated it was premature to seek any comment from the public until it was known if the public hearing was going to be held or not.

(1) Motion: to approve the agenda, as submitted

Motion/Second: Councilmember Polanski/Vice Mayor McHugh

Councilmember Polanski commented that she made the motion in order to allow members of the public to comment on proposed fees, as noticed.

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

(2) Motion: to approve the agenda, with the removal of Item No. 1

Motion/Second: Councilmember Gomez/Councilmember Giordano

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

## CONSENT CALENDAR

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

Motion/Second: Councilmember Giordano/Councilmember Polanski

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

- \* 4. Commission Appointments Community Advisory Commission:  
Appointed Nika Ma Chen as a regular member to a term that expires in January 2011.  
Appointed Phong Nguyen as Alternate No.1 to a term that expires in January 2011.

Appointed Dan Manassau as Alternate No. 2 to a term that expires in January 2011.  
Newly appointed Stephanie Fong as Alternate No. 3 to a term that expires in January 2010.

Emergency Preparedness Commission:

Re-appointed Michael Berryhill to a term that expires in June 2012.

Appointed Tim Howard as Industry Representative to a term that expires in June 2011.

Newly appointed Frank DeSmidt as Chamber of Commerce Representative to a term that expires in June 2012.

- \* 5. Expand Commissioner Eligibility      Adopted Resolution No. 7878 changing the Bylaws of various City of Milpitas Commissions in accordance with the recommendation to permit residents of Milpitas within School District boundaries to serve on Commissions.
- \* 7. Ordinance No. 43.211      Waived the second reading and adopted Ordinance No. 43.211, adopting Section V-100-9.05, Loitering in Median Strips within a City Street.
- \* 8. Ordinances No. 38.790 and No. 230.1      Waived the second readings and adopted Ordinances No. 38.790 and No. 230.1, related to mobile home park conversions.
- \*11. Resolution for Tax Agreement      Adopted Resolution No. 7883 approving a Sales and Use Tax Agreement between the City of Milpitas and KLA-Tencor Corporation, and authorize the City Manager or his designee to execute the Agreement.
- \*12. Resolution Approving Gazebo      Adopted Resolution No. 7884 approving Site Development Permit No. SD09-0002, subject to the conditions of approval.
- \*13. Assessments for LLMD No. 95-1 McCarthy Ranch      Adopted Resolution No. 7870 preliminarily approving the Annual Engineer's Report for LLMD No. 95-1 and providing for the notice of public hearing.
- \*14. Assessments for LLMD No. 98-1 Sinclair Horizon      Adopted Resolution No. 7869 preliminarily approving the Annual Engineer's Report for LLMD No. 98-1 and providing for the notice of public hearing.
- \*15. Resolution for Town Center Project      Adopted Resolution No. 7887 granting initial acceptance of subdivision improvements and authorizing reduction in penal sum of subdivision improvement bond for Tract No. 9886, Town Center Residential Project No. 3208.
- \*16. Resolution for Hurst Jaws of Life for Fire Department      Adopted Resolution No. 7888 approving the standardization of Hurst Jaws of Life and Rescue 42 tools as the brand of choice for fire emergency rescue equipment.
- \*17. Resolution to Release Unclaimed Checks      Adopted Resolution No. 7889 to transfer a total of \$174.63 for unclaimed checks, per the list of checks generated by the City's Finance department, to the General Fund in accordance with Standard Operating Procedure No. 26-1.
- \*18. Award Construction Contract to Preston Pipelines      Awarded construction contract to Preston Pipelines Inc. for Minor Storm Drain Project on County Club Drive, Project No. 3700.
- \*19. Contract Amendment for Employee Assistance Program      Authorized the City Manager to enter into a contract amendment for an employee assistance program with MHN for the period of May 1, 2009 through December 31, 2010 for a total amount not to exceed \$45,288.
- \*20. Amendment to Master Service Agreement - SCRMA      Authorized the City Manager to execute an amendment to the current contract with Southern California Risk Management Association (SCRMA) to extend the agreement through June 30, 2010 and to approve payments in an amount not to exceed \$132,774 for the administration of the workers' compensation program for the City of Milpitas.
- \*21. Agreement with Cayenta Inc.      Authorized the City Manager to execute an agreement with Cayenta, Inc. for consultant services to implement and upgrade the financial and utility systems for a total amount not-to-exceed \$108,760.



Speakers:

**Rob Means**, 1421 Yellowstone, complimented staff for preparing the checklist internally, which would probably make it less expensive for a developer/builder. These were easily achievable standards in the ordinance and he suggested that Council should think bolder and take stronger steps. It did nothing for the built environment and residents needed to be energy self-sufficient.

**Byron Winters**, Milpitas resident, had installed communication sites nationwide. His experience was that such ordinances feed on themselves and could discourage businesses from coming to the City. With arbitrary regulations in each government, these could be open to interpretation and make it difficult to do business, for example, for a communications company such as the one he worked for.

(1) Motion: move to close the public hearing

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

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

City Attorney Ogaz read aloud the title of Ordinance No. 65.138, "An Ordinance of the City Council of the City of Milpitas Adding a New Chapter 20 to Title II of the Milpitas Municipal Code Relating to Green Building Regulations."

(2) Motion: to waive the first reading beyond the title of Ordinance No. 65.138

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

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

(3) Motion: to introduce Ordinance No. 65.138

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

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 meeting jointly with the City Council, at 7:46 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 meeting minutes of the meeting of May 19, 2009, as submitted

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

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

Councilmember Giordano requested to reverse the order of RA4 and RA5 items. The Mayor agreed to call them in that order.

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

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

**RA 4. Senior Center Construction Update**

CIP Engineer Steve Erickson provided an update to Council/Agency on the progress of construction on the new senior center. The source of mold was discovered to be leaking in the building structure itself, and work was underway to clear any mold. He reviewed the budget, up to current expenditures.

Councilmember Giordano asked if the project remained on schedule. Staff reported that the contractor had been about 15 days behind due to the unexpected mold abatement. The building's targeted opening date was in August 2010.

Motion: to receive staff progress report on the Senior Center Project No. 8176

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

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

**RA 5. Vice Mayor Proposal regarding budget and employees**

Vice Mayor McHugh wanted to reconsider the City Manager's original budget proposal, regarding the Manager's request for employees to participate in paying more toward their PERS retirement expense. He detailed his suggestion to his colleagues, which would give time to employees and time for the City to restructure and re-organize city government.

Motion: to require represented City employees to pay an additional 2.5% of their monthly retirement cost for Fiscal Year 2009-10, and the City would rescind layoff notices, to generate \$930,000 allowing the City to get through the coming fiscal year

Vice Mayor McHugh motioned as above, and no second to was offered, so the motion failed for lack of a second.

Mayor Livengood commented that this item was related to the budget, which was the next item for discussion. The public could speak on Item No. RA6 if they wished.

**RA 6. FY 2009-10 Budget**

Finance Director Emma Karlen gave a brief review of the strategy to close the initial budget gap of \$8.7 million for next FY 2009-10. \$67.4 million would be the total General Fund budget, with a total city budget of \$145.07 million for all funds.

Councilmember Polanski asked about the Redevelopment Agency loan payment amount and rationale. Ms. Karlen explained the sale of properties sold by the City to the Agency in the past, with the loan agreement for this sale to be paid back over time, in different amounts each year.

Mayor Livengood next if anyone wanted to speak to the City Council.

- 1) **Arzhang Kalbali**, Milpitas resident, read in the newspaper about layoffs happening. He had been laid off last November and understood the difficulties of this type of action. To simply cut people off was not the solution. There were other ways to cut expenses.
- 2) **Rob Means**, 1421 Yellowstone, commented on the RDA purchase of land and sale re-payment plan and the Mayor responded.
- 3) **Dave Ritchie**, representative of United Public Employees of California (representative of four bargaining units in the City of Milpitas) had comments and concerns for employees. His key concern was the manner that layoffs were considered. Mitigating layoffs could be achieved by discussion, and that was

not held. Unions proposed mitigating efforts, provided they were given the latitude to do so. He claimed that all bargaining groups now would agree to the 2.5% give-back to PERS and wanted to understand impacts for the next fiscal year and year after that. UPEC had significant opposition to the budget proposed at this meeting, with specific layoffs of the listed positions.

Mayor Livengood responded to his comments. The position of the unions was not always as clear as stated at this meeting. The City's budget was not a meet and confer issue, as to amount of money the City spent in its budget – that's the job of City Council. He stated the City must cut expenses to balance its budget. This was the second time he had voted for layoffs since he'd been on Council, and it was not a pleasant thing to do.

Councilmember Gomez saw this as a \$10 million problem overall. He asked the Mayor about the team that the Mayor had alluded to in his April speech. It was now time for employee groups to participate in long term solutions to the City's financial challenges. When that task would force start, he asked, and the Mayor replied in August.

Councilmember Polanski was very conflicted over the budget, as she did not want to see anyone laid off anywhere. It was very stressful, including where she worked during the day where lay-offs were happening. However, she was not hearing good financial news, anywhere. She commented on what she'd heard from the California Governor today, and it was still bad at the state level.

Vice Mayor McHugh could not and would not support the budget, and he did not support the process that got it here.

Councilmember Giordano noted that she did not see any Police and Fire here in the Council Chambers. She was sorry for the folks who were to be laid off.

Mayor Livengood strongly disagreed with the Vice Mayor, and he felt there had been a very fair and open process on the budget, although he knew there were people unhappy with it.

(1) Motion: to adopt the Final Budget of the City of Milpitas and of the Milpitas Redevelopment Agency for FY 2009-2010 by adopting five resolutions:

- a) Resolution No. 7875 of the City of Milpitas adopting the FY 2009-10 Appropriations Limit of \$67,456,978 for the City of Milpitas.
- b) Joint Resolution No. RA330/7876 of the Redevelopment Agency and the City of Milpitas approving the City's Final FY 2009-10 Budget of \$145,073,350 including the FY 2009-10 Capital Improvement Program Budget of \$19,664,549.
- c) Joint Resolution No. RA 331/7877 of the Milpitas Redevelopment Agency and the City of Milpitas making findings following a Public Hearing for use of Redevelopment funds.
- d) Resolution No. RA332 of the Milpitas Redevelopment Agency authorizing payments to the City of Milpitas, pursuant to the Second Amended and Restated Public Works Agreement.
- e) Resolution No. RA333 of the Milpitas Redevelopment Agency determining that the planning and administration expenses to be funded in FY 2009-10 by the Housing Reserve Fund are necessary for the production, improvement and/or preservation of affordable housing for the low and moderate-income households.

Motion/Second: Councilmember Giordano/Councilmember Gomez

Motion carried by a vote of:

AYES: 3

NOES: 2 (McHugh, Polanski)

(2) Motion: to approve the revised Budget Guidelines and Fiscal Policies; and, approve the reclassification of one Recreation Assistant II to Recreation Assistant IV and one Public Works Maintenance Supervisor to Senior Maintenance Supervisor

Motion/Second: Councilmember Giordano/Councilmember Polanski

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

**\*RA 7.** Contract to Home Line Inc. for the Milpitas Library Window Covering Package

Awarded a construction contract to Home Line Incorporated for the Milpitas Library Window Covering Package, Project No. 8162.

**\*RA 8.** Contract to Joseph J. Albanese, Inc. for Carlo Street Off-Ramp Conversion

1. Awarded a construction contract to Joseph J. Albanese, Inc. for the Carlo Street Off-ramp conversion, Project No. 8195.  
2. Authorized staff to execute change orders for the Carlo Street Off-ramp conversion, provided that change orders do not exceed the established construction contingency.

**RA 9. ADJOURNMENT**

Chair/Mayor Livengood adjourned the Redevelopment Agency meeting at 8:27 PM.

**REPORTS OF OFFICERS**

Two items were approved on the consent calendar.

**ORDINANCES**

Two ordinances were adopted on the consent calendar.

6. Ordinance No. 197.11 regarding Building Department

City Manager Tom Williams explained the need to technically update by ordinance the reorganization of the Building and Safety office (previously a division of a no longer existent department) into a single, stand alone department.

City Attorney Ogaz read aloud the title of Ordinance No. 197.11, "An Ordinance of the City Council of the City of Milpitas Amending Section 1.00 of Chapter 3, Title VI of the Milpitas Municipal Code by Reorganizing the Building and Safety Division into a Department."

(1) Motion: to waive the first reading beyond the title of Ordinance No. 197.11

Motion/Second: Councilmember Polanski/Vice Mayor McHugh

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

(2) Motion: to introduce Ordinance No. 197.11

Motion/Second: Councilmember Polanski/Councilmember Giordano

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

**RESOLUTIONS**

Seven resolutions were adopted on the consent calendar.

**9.** Resolutions related to the Water Supply Agreement with City & County of San Francisco

Utility Engineer Kathleen Phalen introduced Mr. Art Jensen, Executive Director of the Bay Area Water Supply and Conservation Agency. Mr. Jensen provided background information about the negotiation of the new water supply agreement, negotiated with San Francisco on behalf of the 27 agencies that were members of the consortium. There were six major objectives in the original agreement, which were still met in this new one. Rate fluctuations were to be avoided. He highlighted a few of the additional water supply provisions too.

The City of Milpitas was the tenth agency to take action on this new agreement, while the remainder would consider and vote on it in the coming month.

Mayor Livengood, who had served on BAWSCA previously, responded that this was an example when Sacramento helped the City to create an agency with clout, and it had worked, with regard to the purchase of water resources. Mr. Jensen had done a great job on this process, and ended up with a fair agreement.

Upon request by the Mayor, City Attorney Ogaz confirmed that the City Council could approve the required resolutions all in one motion.

Motion: approve the following actions:

1. Adopted Resolution No. 7881 Adopting Findings for Purposes of the California Environmental Quality Act in Connection with the Approval of the Water Supply Agreement with the City and County of San Francisco and Directing the City Manager to file a Notice of Determination with the County Recorder.
2. Adopted Resolution No. 7879 Approving the Water Supply Agreement with the City and County of San Francisco.
3. Adopted Resolution No. 7880 Approving an Individual Water Sales Contract with the City and County of San Francisco.

Motion/Second: Councilmember Giordano/Councilmember Polanski

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

**10. Resolution and report on the Alviso Adobe Renovation Project No. 5055**

City Engineer Greg Armendariz provided a progress report on the work done at the Alviso Adobe for Phase III of the project. He went over the project schedule, and explained the need for Council to approve the proposed environmental document. If authorized, the project was ready for bids for the next phase.

Council inquired about the needed access road and possible alternatives. Mr. Armendariz said he would report on that issue in the fall. Staff was seeking federal grants now for future work on the project also.

Motion: approve the following:

1. Receive progress report on Alviso Adobe Renovation Project, CIP No. 5055.
2. Approve plans and specifications for Alviso Adobe Renovation Project.
3. Authorize advertising the project for bid proposals.
4. Adopted Resolution No. 7882 approving the Final Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Alviso Adobe Renovation.

Motion/Second: Councilmember Giordano/Councilmember Gomez

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

**BIDS & CONTRACTS**

Four items were approved on the consent calendar.

**ADJOURNMENT**

Mayor Livengood adjourned the City Council meeting at 8:47 PM.

**The foregoing minutes were approved by the Milpitas City Council as submitted on June 16, 2009.**

  
Mary Lavelle, City Clerk