

**MEETING MINUTES
CITY OF MILPITAS**

Minutes of: Regular Meeting of Milpitas City Council
Date: Tuesday, August 4, 2009
Time: 6:30 PM
Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas

ROLL CALL

Mayor Livengood called the meeting to order at 6:30 PM. City Clerk Lavelle called the roll.

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

ABSENT: Councilmember Giordano was absent at roll call. She arrived at 6:31 PM.

CLOSED SESSION

Mayor Livengood stated the City Council would convene to Closed Session for discussion of real property negotiations regarding 130 Piedmont Rd, APN 092-37-046.

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

**CLOSED SESSION
ANNOUNCEMENT**

None.

PLEDGE

Mayor Livengood led all in the Pledge of Allegiance.

INVOCATION

None

MINUTES

Motion: to approve the City Council meeting minutes of June 16, 2009, as amended

Mayor Livengood reminded his colleagues that he was not present at the previous meeting, and thus would abstain from voting on approval of the meeting minutes.

Vice Mayor McHugh asked for an update on CDBG additional funds, and whether Calle Oriente Park was allowed to qualify for the funds. City Manager Williams responded it did.

Vice Mayor McHugh requested a correction on page 9 of the draft minutes to note that he was the person who called the Agency meeting to order.

Motion/Second: Councilmember Gomez/Vice Mayor McHugh

Motion carried by a vote of: AYES: 4
NOES: 0
ABSTAIN: 1 (Livengood)

SCHEDULE OF MEETINGS

Motion: to approve Council Calendar/Schedule of Meetings for August 2009, as amended

City Manager Williams reported there was a Milpitas Unified School District/City communication meeting scheduled on Wednesday, August 5 at 4:30 PM at City Hall.

Vice Mayor McHugh announced that he and Councilmember Gomez were not available for Friday's scheduled Rules Committee meeting, so it will be canceled.

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

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

PRESENTATION

Mayor Livengood proclaimed “National Night Out” in Milpitas on August 6, 2009 and presented the proclamation to Community Advisory Commission Chair Mike Queenan, Milpitas Police Officer Kevin Jackson, and Police Sgt. Daryl Sequiera. There were 25 scheduled parties in various neighborhoods planned on Thursday night starting at 6:00 PM.

PUBLIC FORUM

Robert Marini, Milpitas resident, spoke regarding voting by property owners held in May on increased sewer and water fees. He complained of the City not following the law regarding Proposition 218 hearings. He quoted the law on rate increases for fees and charges.

Frank DeSmidt Chamber of Commerce government representative invited the Mayor and Councilmembers to attend the Milpitas Business Forum at Zahir’s restaurant on Wednesday August 12, at 5:30 PM.

ANNOUNCEMENTS

Mayor Livengood congratulated the City Manager and staff on 4th of July activities held in the City. Independence Day was once again a very successful one, and appreciated by all who attended. The Mayor read a letter of appreciation from one resident, who especially enjoyed the fireworks display. He also highlighted staff who worked hard to put on the activities for 20,000 people this year.

Councilmember Giordano asked if the “National Night Out” event information for Thursday was posted to the City website. Additionally, she requested to permit a City Attorney memo to be made public, providing public awareness with regard to a response to a resident’s recent comments on Roberts Rules of Order, and how the Council agenda was prepared. That should be made public and the City Attorney agreed it could be placed on the agenda for the next meeting.

ANNOUNCEMENT OF CONFLICT OF INTEREST

None.

APPROVAL OF AGENDA

Motion: to approve the agenda, as amended

City Manager Williams noted that Item No. 1 needed to be moved to the Redevelopment Agency agenda for necessary action by both entities. Mayor Livengood replied it would then become Item No. 3A on the Agency agenda, and could be added when the body arrived at approval of the Agency agenda later.

For the record, Mr. Williams noted that Item No. 8, a building code-related ordinance, was not on the consent calendar (as incorrectly noted on agenda reports section).

Motion/Second: Vice Mayor McHugh/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 submitted

Again noted was that Item No. 8 was not on consent.

Motion/Second: Vice Mayor McHugh/Councilmember Gomez

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

* 7. Approve Re-opening Capital Improvement Projects Approved re-opening Capital Improvement Project No. 4241 Street Light & Signal Pole Painting 2008, Project No. 4047 Dixon Landing Road/I-880 Interchange, Project No. 7107 Water Master Plan 2009, Project No. 6108 Sewer Master Plan 2009 and Project No. 6103 Main Sewage Pump Station.

* 9. Adopt Ordinance No. 278 Waived the second reading and adopted Ordinance No. 278, Levying and Apportioning the Special Tax in Community Facilities District No. 2008-1.

- * 10. Adopt Ordinance No. 38.792 Waived the second reading and adopted Ordinance No. 38.792 for amendment to the zoning code.
- * 11. Resolution Granting Final Acceptance, Project No. 4212 Adopted Resolution No. 7910 granting final acceptance of the Barber/Bellew Signal Installation Project No. 4212 and release of the contractor's bond.
- * 12. Resolution Granting Final Acceptance, Project No. 6079 Adopted Resolution No. 7911 granting final acceptance of the Main Sewage Pump Station Demolition and Site Improvements, Project No. 6079, and release of the contractor's bond.
- * 13. Resolution Granting Final Acceptance, Project No. 7083 Adopted Resolution No. 7912 granting final acceptance of Hillside Water System Improvements, Project No. 7083, and release of the contractor's bond.
- * 14. Resolution Granting Final Acceptance, Project No. 3169 Adopted Resolution No. 7913 granting final acceptance of Parc Place Condominiums Project No. 3169 and release the subdivision improvement bond for Tract No. 9569.
- * 15. Resolution Granting Initial Acceptance, Project No. 3179 Adopted Resolution No. 7914 granting initial acceptance and authorizing a reduction in penal sum of subdivision improvement bond for Tract No. 9891, Calaveras Country Estates, subject to a one year warranty period and reduction of the faithful performance bond to \$30,000.
- * 16. Resolution Authorizing City Manager to Execute a Grant Deed re: Project 4186 Adopted Resolution No. 7915 authorizing the City Manager to execute a grant deed transferring certain real property to the State of California Department of Transportation for Abel/Calaveras Right Turn Lane, Project No. 4186.
- * 17. Approve Purchase of Fire Pumper from Golden State Fire Apparatus Adopted Resolution No. 7916 approving the sole source purchase of a 2009 Pierce Arrow XT All-Wheel Steer Fire Pumper from Golden State Fire Apparatus, Inc for the not-to-exceed amount of \$556,545.
- * 18. Resolution to Accept ARRA-funded JAG for Police Adopted Resolution No. 7917 to accept the American Recovery and Reinvestment Act (ARRA) Edward Byrne Justice Assistance Grant (JAG) in the amount of \$73,137, administered by the County of Santa Clara.
- * 19. Approve Amendment No 3 to Empire Maintenance contract Approved Amendment No. 3 to the contract with Empire Maintenance Services for the not-to-exceed amount of \$23,720, subject to approval as to form by the City Attorney.
- * 20. Authorize Agreement with Nicolay Consulting Group for Actuarial Valuation Service Authorized the City Manager to execute an agreement with Nicolay Consulting Group for actuarial valuation services on retiree medical benefits, for the not-to-exceed amount of \$48,400.
- * 21. Approve Agreement with Hopkins & Carley Authorized the City Manager to execute the Reinstatement Agreement with Hopkins & Carley for legal services.
- * 22. Approve Amendment No. 2 with Stevens Creek Disposal Approved Amendment No. 2 to the agreement with Stevens Creek Disposal and Recycling for a debris box.
- * 23. Approve Agreement with Super Link Plastic, Inc. Approved a Non-Exclusive Collection, Transportation and Recycling of Non-Putrescible Debris Agreement with Super Link Plastic, Inc.
- * 24. Authorize Encroachment Permit Agreement with Christ Community Church Authorized the City Manager to execute an encroachment permit agreement with Christ Community Church (The Presbytery of San Jose) at 1000 S. Park Victoria Drive for Project No. 3181.
- * 25. Authorize MOU with Santa Clara Valley Water District Authorized the City Manager to execute the Memorandum of Understanding with Santa Clara Valley Water District to provide a match for the Water Efficient Landscape Rebate for residential customers with a not to exceed amount of \$5,000 for FY 2009-10.
- * 26. Approve Amendment No. 1 to the Contract with ACCO Approved Amendment No. 1 to the contract with ACCO Engineered Systems for HVAC maintenance and repair for the not-to-exceed amount of \$20,000.

(2) Motion: to adopt Resolution No. 7905 confirming the weed abatement report and assessment list to be entered on the tax assessment bill for the 2009 weed abatement program

Motion/Second: Councilmember Gomez/Councilmember Giordano

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

UNFINISHED BUSINESS

3. Report from City Manager

City Manager Tom Williams reviewed his June meeting with UPEC representatives and the final outcome of the recent lay-offs, retirements and re-assignments of City of Milpitas employees.

Regarding the State of California budget and its shortfall, the state would borrow (per Proposition 1A) \$1.7 million from General Fund and the state must pay it back with interest within three years. Using the Governor's term "ugly," the City Manager announced that the \$11.8 million would be taken from the Redevelopment Agency, not borrowed.

Mr. Williams sought direction from the Council to return with a budget amendment at the meeting of August 18. He noted that gas tax money would not be taken by the state, as originally proposed in Sacramento.

Councilmember Gomez asked, when bringing this matter back, would it be borrowing from different funds in the City? Mr. Williams replied yes, from three possible sources: (1) general fund reserves, (2) Art Fund, and/or (3) the hotel tax.

Councilmember Giordano asked for confirmation that it was \$1.7 million from property tax. The City Manager replied yes, from FY 2009-10 (current year) budget.

Motion: direct staff to place on the Council's agenda a budget amendment for City Council (and Agency) consideration to address the state's plan for a revenue take and borrowing, while maintaining a balanced budget for the City

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 Agency, meeting jointly with the City Council, at 7:32 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 Redevelopment Agency meeting of June 16, 2009, as amended

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

City Clerk Lavelle noted she would amend the minutes to reflect that the Vice Chair/Vice Mayor called the Agency meeting to order.

Motion carried by a vote of: AYES: 4
NOES: 0
ABSTAIN: 1 (Livengood)

RA 3. Agenda Approval and Consent Calendar

Motion: to approve the agenda and consent calendar items (*), as amended

Mayor Livengood announced that Public Hearing Item No. 1 from the City Council agenda was moved onto the Agency agenda as Item No. RA 3(a).

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

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

RA3a. Amendments to the Centria West development project

Planning Director James Lindsay addressed the Agency/Council about the changes requested in the Centria West residential development project, and the amended Owner Participation Agreement desired.

Councilmember Polanski noted that usually 20% affordability units were built, so with \$3 million in improvements in this project, it allowed waiving affordable units. Mr. Lindsay responded that there was no in lieu fee established in Milpitas. Notably higher level amenities were viewed as an investment in the community.

Peter Zack, of Lyon Apartment Companies, thanked the City staff and was very excited about the project coming to the Milpitas community, with many enhancements.

Mayor Livengood opened the public hearing for comment and none were heard.

(1) Motion: move to close the public hearing

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

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

(2) Motion: adopt Joint Resolution No. 7904/RA338 approving the Centria West project including tentative map and Conditional Use Permit; and, directed staff to consider in lieu fees for affordable housing on future developments

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

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

RA 4. Progress Report on the New Senior Center Project

CIP Manager Steve Erickson reviewed the ongoing construction status of the new Senior Center project, its budget including change orders to date, and the project was 22.1% completed. He displayed photos of construction framing and community room layout

Councilmember Giordano inquired as to the solar energy system and its status for the new Senior Center. City Manager commented further, and reported that staff could provide information at the next meeting, explaining the cost/benefit of solar on the roof top of City projects.

Motion: to receive staff update on the new Senior Center Project No. 8176

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

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

**RA 5. Proposed MOU with
Apton Properties LLC**

Planning Director James Lindsay provided background and history of the Apton Plaza project over the last five years. He gave staff analysis for recommendation to deny what the property owner/developer was seeking, with new financial participation from the Agency. Mr. Badru Valani, property owner/developer, was present.

Mr. Steven Gall of USA Properties Fund, new developer for Apton, changed the developer's terms of its proposal for the loan payment of \$4.4 million it sought. Repayment proposal included the following; 1) 3.5% simple interest, 2) in operating year four, 75% of cash flow to the city loan, and 3) obligation to refinance the project at operating year 15, to pay down principal and with the balance amortized over an additional 25 years.

Mayor Livengood responded that he would like to get this project built. He'd like to see it get going, but this proposal was an over-accumulation of affordable units in the City, with not enough security for the dollar amount requested. The Mayor wanted to float a new idea: build this project as affordable and have other developers pay to build those, have a per-door value to the City for future developer to defray the \$4.4 million funding output now. Use the in-lieu fee strategy to get the money paid back sooner.

Vice Mayor McHugh wanted the developer's reaction to the Mayor's proposal, and asked staff to comment on the revised terms presented by USA Properties Fund. Mr. Gall stated he would have no problem with the Mayor's proposal on a "banking" idea. For any continuance of this matter to a future meeting was a problem in that USA had an application in to a state agency to perfect its funding of the project by August 17. City Manager Williams echoed the Mayor's concerns on repayment of any loan and lack of collateral, however with a safety valve, staff could look at it.

Councilmember Gomez listened to what was presented at this meeting, and asked if staff had a recommendation. Mr. Williams responded that staff needed time to revisit the \$50,000 per unit suggested as an in-lieu affordable housing fee, and discussed other projects in the pipeline with affordable and other units to be built.

Councilmember Giordano asked if the \$4.4 million came right out of the Agency's budget. Mr. Williams explained that it would be from the 20% set-aside housing funds.

Councilmember Gomez asked what impact did this have on other projects underway. The City Manager said it jeopardized some other projects for infrastructure improvements.

Councilmember Polanski asked if the City had the \$50,000 per unit fee in place, that would have garnered close to \$4.8 million, enough to cover the loan requested to build affordable units.

Councilmember Giordano wondered if the City was opening up the door for other developers to do the same, by setting such a precedent.

Vice Mayor McHugh asked about the number of units, staff said 93, and he asked if they were all available for collateral. The Mayor replied yes.

City Attorney Ogaz commented on the proposed, amended Memorandum of Understanding in the Council's agenda packet, which did not reflect what was discussed. He noted that there were various options on how the Council could proceed.

Councilmember Polanski inquired if it was possible to amend the MOU with revised language, an in-lieu fee proposal, and then could the City Manager be authorized to execute the documents? City Attorney agreed.

***RA 15.** Authorize Amendment No. 1 to contract with Cal-West Lighting & Signal Maintenance

Authorized the Agency Executive Director/City Manager to execute Amendment No. 1 to the contract with Cal-West Lighting & Signal Maintenance for On-Call Traffic Signal and Streetlight Support Services.

RA 16. ADJOURNMENT

Chair/Mayor Livengood adjourned the Redevelopment Agency meeting at 8:21 PM.

REPORTS OF OFFICERS

4. Mayor Livengood Task Force Proposal

Mayor Livengood recommended (in his written memo to Councilmembers) to form a task force headed by Councilmember Giordano to come up with long term solutions to eliminate the structural deficit in the City's annual budget, balancing expenditures and revenues.

Motion: per Mayor Livengood's recommendation, authorize a task force to prepare recommendations to the City Council on how to balance the City's revenues and expenditures by Fiscal Year 2012-13; and, nominate Councilmember Debbie Giordano to represent the City Council on the task force

The Mayor expressed his point that the Task Force should report back to the City Council before the end of the year.

Motion/Second: Councilmember Gomez/Councilmember Polanski

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

5. Renaming Recommendations for Bob Browne Park and Langhorst St.

Mayor Livengood noted the two requests for renaming a park and affirm a new future street name.

Motion: to change the name of Yellowstone Park to Bob Browne Park, honoring the former Mayor, Councilmember, City employee and long time resident of Milpitas's Parktown neighborhood

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

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

Vice Mayor McHugh reported that the street name change was not presented nor discussed at the last Rules Committee meeting on July 24. Mayor Livengood responded that it had been presented and recommended by the former Facilities Naming Subcommittee, prior to the time the Vice Mayor had joined the City Council.

Mayor Livengood asked for speakers on this topic.

Mrs. Egbert, long-time Milpitas resident, spoke up in favor of the addition of the street name for Mr. Langhorst, a man she and her family had known and respected.

Motion: to approve a new street name in honor of Gary Arlen Langhorst

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

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

NEW BUSINESS

Three items were approved on the consent calendar.

6. Resolution for Survey on Area for Possible Redevelopment

Economic Development Manager Diana Barnhart explained the request for a feasibility analysis which was done by Keyser Marston Associates. That firm completed the

analysis and concluded that the three identified areas exhibit blight to be considered for redevelopment.

She reviewed the four next steps, if Agency/Council chose to move forward, for the preliminary plan. Mayor Livengood commented on some portions of the study report.

Motion: to adopt Resolution No. 7909 designating a redevelopment Survey Area, directing the Planning Commission to formulate a Preliminary Plan and providing staff with directives on possible redevelopment project area formation

Motion/Second: Vice Mayor McHugh/Councilmember Gomez

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

ORDINANCES

Two ordinances were adopted on the consent calendar.

8. Ordinance No. 65.139 related to Building Code

Mayor Livengood reported first that he had asked for this building permit extension to be considered because projects were taking longer to get financing approved, in the current economy.

Chief Building Official Keyvan Irannejad explained the ordinance presented, which would allow for a longer amount of time (180 days additional) for the extension of a building plan review application, plan submittal and project completion.

City Attorney Ogaz read aloud the title of Ordinance NO. 65.129 "An Ordinance of the City Council of the City of Milpitas Amending the Building Administration Code by Providing for Additional Building Permit and Plan Review Extension Periods."

(1) Motion: to waive the first reading beyond the title of Ordinance No. 65.139

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

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

(2) Motion: to introduce Ordinance No. 65.139, amending the Milpitas Building Administration Code by providing for additional building permit and plan review extension periods (180 days additional)

Motion/Second: Vice Mayor McHugh/Councilmember Gomez

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

RESOLUTIONS

Eight resolutions were adopted on the consent calendar.

BIDS & CONTRACTS

Fifteen items were approved on the consent calendar.

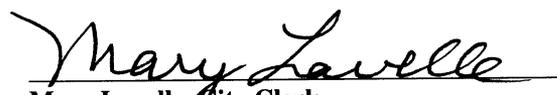
CLAIMS & DEMANDS

Two items were approved on the consent calendar.

ADJOURNMENT

Mayor Livengood adjourned the City Council meeting at 8:39 PM.

The foregoing minutes were approved by the Milpitas City Council as submitted on August 18, 2009.


Mary Lavelle, City Clerk