

**MEETING MINUTES
CITY OF MILPITAS**

Minutes of: Regular Meeting of Milpitas City Council
Date: Tuesday, October 20, 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 and Councilmember Polanski

ABSENT: Councilmembers Gomez and Giordano. Ms. Giordano arrived at 6:35 PM.

CLOSED SESSION

Mayor Livengood stated the City Council would convene to Closed Session for discussion of labor negotiations with the Milpitas Supervisors Association.

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

**CLOSED SESSION
ANNOUNCEMENT**

None.

PLEDGE

Boy Scouts Troop No. 92 led the colors procession and pledge of allegiance.

INVOCATION

Councilmember Debbie Giordano introduced Father Norman Segovia of St. John the Baptist Catholic Church, who provided an invocation prayer.

MINUTES

Motion: to approve City Council meeting minutes of October 6, 2009, as submitted

Motion/Second: Councilmember Polanski/Councilmember Giordano

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

SCHEDULE OF MEETINGS

Motion: to approve the Council Calendars/Schedule of Meetings for the months of October and November, as amended

City Manager Tom Williams announced two changes: the October 21 meeting was moved to November 4 at 4:30 PM for the City/MUSD communication meeting. Also the City Task Force on Cost Reduction was changed from October 21 to October 28 at 1:00 PM.

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

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

PRESENTATIONS

Mayor Livengood presented the following:

Proclamations

Domestic Violence Awareness Month – October 2009, presented to Mr. Frank Del Fiugo, Chair of the Santa Clara County Domestic Violence Council, by the Mayor and Councilmember Giordano.

Hand-made Hugs Charity, recognized for its volunteer work; started in 2007 by Milpitas resident Judy Smalls, to whom the Mayor and Vice Mayor presented the proclamation. Volunteers had

crocheted more than 7,000 items which were then donated to local hospitals for babies, children, and sick adults.

Commendations

Presented by the Mayor and Councilmember Polanski to six Milpitas Elementary School principals and three additional school staff, Milpitas Police Officer Dennis Kraft and Milpitas Unified Council of PTA's President Sally Minor for participating and working closely with the Milpitas Police Department for *Walk and Bike to School Day* on October 7, 2009.

PUBLIC FORUM

Pam Smitz, Milpitas High School PTSA President, was seeking support from the Council and the community for its annual scholarship program again this year.

Gaye Morando, Chamber of Commerce, invited all to a mixer at the Humane Society Silicon Valley. She announced "Make a Difference Day" coordinated by Leah Facun on Saturday, October 24 at Cardoza Park. Also, the Chamber planned to kick off "Shop Milpitas" for the holiday season soon. A Pumpkin Patch by Rotary Club was scheduled to start on Saturday.

ANNOUNCEMENTS

Mayor Livengood announced he would be making Planning Commission appointments in November, and to have those confirmed by City Council in December. There were four seats up for appointment this fall on the Planning Commission.

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)

CONSENT CALENDAR

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

City Manager Tom Williams noted that on Item No. 3, the request was for a refund of fees already paid (not to waive fees).

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

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

- *3. Action related to Rotary Club's Pumpkin Patch Per the Vice Mayor's recommendation, approved the request by Milpitas Rotary Club to refund \$821 paid as City fees, associated with the review and permitting for its annual pumpkin patch, which opened on October 16.
- *4. Approve Payment for "Art in Your Park" at Pinewood Park Approved final payment for Pinewood Park "Green Tree" Art in Your Park project and authorized funding in the amount of \$10,000 from the Public Art Fund FY 2009-10.
- *5. Approve Two Youth Sports Assistance Fund grants Awarded two Youth Sports Assistance Fund grants: \$1,000 to Milpitas Youth Soccer Club and \$500 to Nastassia Hamor.
- *8. Resolution on Findings for Unexpended Development Fees Adopted Resolution No. 7931 making findings for unexpended development fees and review and accept the annual developer fee disclosure information.
- *9. Resolution of Local Support for ARRA Funding Adopted Resolution No. 7932 of local support for federal American Recovery and Reinvestment Act of 2009 Funding for Abbott Avenue Resurfacing, Project No. 4251.

*10. Award Bid for 2 Toyota Camry Hybrids to Piercey

Awarded the bid for two 2010 Toyota Camry hybrid vehicles to Piercey Toyota for the not-to-exceed amount of \$56,968.90.

PUBLIC HEARING

1. Hearing on Appeal of Fire Inspection by Mr. Peter Nelson (continued)

City Manager Tom Williams provided a brief history of this matter to date, with regard to fees disputed by a property Milpitas owner, Mr. Peter Nelson.

City Attorney Mike Ogaz left the dais, so that Assistant City Attorney Bryan Otake would provide legal advice to City Council on this matter (as various legal rules did not allow Mr. Ogaz to do so). Mr. Otake stated the process and rules for the hearing.

Mr. Nelson came to the podium and made three requests to City Council prior to the start of the hearing. First, he wanted an extension of his tolling agreement to the week of Thanksgiving in November. Next, he objected to the Fire Department including 145 pages of material 14 days "late" and thus he should have time to present more material. Third, he requested to show a recording as part of his presentation.

Mayor Livengood ruled on these requests immediately: 1) to allow playing a video, as part of his ten minutes testimony time was fine, 2) as to the material added by City staff – it shall be included with material considered at this hearing, and 3) on the tolling agreement extension, he asked Council what they thought about this request.

Councilmember Giordano moved and Vice Mayor McHugh seconded to extend Mr. Nelson's tolling agreement with the City to December 1, and it passed unanimously.

Next, Mayor Livengood opened the appeal hearing.

Speakers:

Mr. Nelson came to the podium and displayed a video presentation showing an on-site inspection by Milpitas Fire Department staff along with the City Attorney. He made further comments regarding inspections of his property and the brief amount of time those took. He discussed the small claims court outcome and Superior Court case he had filed against the City. There were 53 inspections done by one man on the same day as his property was inspected. He gave many statistics about inspections, his and others.

Mr. Nelson asked another property owner to speak to the City Council and that man stated it took Fire inspectors about six minutes to inspect his property.

Mayor Livengood asked Mr. Nelson point-blank what exactly he sought, from this process. Mr. Nelson replied: to compensate for his legal fees of more than \$36,000, and for his inspection fees to be waived and refunded.

Next, on behalf of the City, Mayor Livengood invited Fire Marshal Patricia Joki to the podium. She provided her background and a statement from the City point of view. Her primary point was that fees were not excessive as claimed and outstanding fees should not be waived. She reviewed the fee methodology, which included calculations beyond merely the amount of time the physical inspection might take for one site visit.

Next, Fire Chief Ruben Grijalva came to podium to speak, and explained his prior experience before he came to City of Milpitas, which included serving as the Fire Marshal for the entire State of California. He stated that the methodology in Milpitas was consistent with industry standards in California, based on his experience.

Mayor Livengood stated it was then time for any questions from the City Council.

Vice Mayor McHugh asked the Fire Marshal how many challenges to fees were there, since 2003 and Ms. Joki responded none. Next, he asked if the Court settlement was in 2006, why has the hearing taken this long to come to City Council? Mr. Otake said an

*RA 4. Resolution for Final Acceptance, Project No. 7076

Adopted Resolution No. RA347 granting final acceptance for the Pinewood Well Upgrade Project, Phase II, Project No. 7076 and release of the contractor's bond.

*RA 5. Award Contract to Rodan Builders

Awarded a construction contract to Rodan Builders, Inc. for the Storm Pump Station Improvements (Wet Well Cleaning), Project No. 8188, in the amount of \$41,875.

RA 6. ADJOURNMENT

Chair/Mayor Livengood adjourned the Redevelopment Agency meeting at 8:10 PM.

REPORTS OF MAYOR AND COMMISSIONS

Two items were approved on the consent calendar.

2. Mayor's Request on Issue of Plastic Bag Ban

Mayor Livengood commented he "stirred up a hornet's nest" with the issue of a ban on single-use plastic bags. He noted the idea of a ban on plastic shopping bags was an issue that was gaining traction all around the Bay, and it was time for this City Council to have a say on the matter. Mr. Livengood felt that Milpitas should wait and see what happened with the required Environmental Impact Report in neighboring City of San Jose. In the meantime, the issue could be referred to one of the City Council Subcommittees for study and discussion.

Councilmember Polanski agreed with the Mayor to wait for City of San Jose's environmental review on this issue. There was a need to do outreach to citizens, and especially to businesses. More and more people were using their own cloth bags recently, and she could share hers with Council, if needed. Use common sense.

Vice Mayor agreed with the last two speakers. Wait, analyze findings, and refer the matter to the Recycling Commission. He was disturbed with some of the information provided to him by interest groups, and some negative impact on the environment if plastic bags were banned. He wanted staff to work with the Recycling and Source Reduction Advisory Commission to discover what were valid points in this issue. Recycling education programs were important, too.

Councilmember Giordano noted recent talk also of banning styrofoam take-out containers. That would have an impact on businesses, especially restaurants. With concern for future economic development, she wanted this issue (food containers) to be included in the mix when studied.

Mayor Livengood asked if anyone wanted to speak on this issue.

Mr. Manny Diaz, spoke on behalf of the American Chemistry Council, a trade association which represents 90% of domestic bag manufacturers in the state of California. When a study was done in Milpitas, the City might want to look at how to enhance recycling facilities in the City. He suggested having an advisory group from the business community. Mr. Diaz offered information and partnerships with businesses, as well as for public education.

Mr. Frank DeSmidt, Chamber of Commerce, noted this issue had come up some time ago at the County and referred to a model ordinance proposed several years ago. A bag tax would be detrimental, it was determined then.

Mayor Livengood explained that he went into a Whole Foods store this day, where there were no plastic bags and customers were satisfied. Nearly all shoppers brought their own canvas bags, and a few came out with paper bags the store offered. So, a ban can work, he felt. Retailers in some places noted it can work. The Mayor agreed it was not as simple as it seemed. But, he urged colleagues to not get boxed in by special interests.

Motion: direct staff to work with the Milpitas Recycling and Source Reduction Advisory Commission; to wait and review the City of San Jose EIR when done; staff to work on public education with businesses and community partners such as the Chamber of

Commerce; and, to also study food preparation and packaging such as styrofoam containers, as part of the study

Motion/Second: Councilmember Polanski/Vice Mayor McHugh

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

NEW BUSINESS

6. Economic Development Monthly Report

Economic Development Manager Diana Barnhart provided her monthly overview of recent business environment and activity in the City of Milpitas.

She highlighted retail activity including the new Marina Foods store preparing to open this fall, and the International House of Pancakes restaurant preparing to open in mid-December. Ms. Barnhart further discussed retail status at the Great Mall and McCarthy Ranch.

Three Milpitas hotels had signed up for the new “Stay and Shop” program. Also, SVUnwired (free wireless) outreach meetings were completed, with the issues of speed and access identified by users in Milpitas.

City Manager Williams commented about the local and state economy in general, noting that caution was still necessary. He reported on decreased sales tax year over year.

Ms. Barnhart responded to questions from Councilmember Giordano, clarifying the planned opening of the IHOP restaurant, and efforts would be made to post a sign when recruitment of employees would start.

Councilmember Polanski remarked, with regard to the Stay and Shop program, she wanted to encourage gift cards for specific stores in the Milpitas mall because consumers had a problem on occasion with Visa gift cards.

Motion: to note receipt and file the report on economic development activity

Motion/Second: Councilmember Polanski/Vice Mayor McHugh

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

ORDINANCE

7. Introduce Ordinance No. 172.5

Milpitas Police Lt. Tom Borck gave a short history of the ordinance adopted in 1995 regulating massage establishments in Milpitas. A new law, adopted in 2008, has begun to be implemented this year in California, when a new non-profit certification organization was created. So, now a municipality cannot regulate those massage businesses that have previously been certified by the state organization.

Mayor Livengood asked for confirmation that police could still inspect the premises of this type of business. Lt. Borck replied yes, and that might happen for issues such as confirming that a business was open.

City Attorney Mike Ogaz read aloud the title of the ordinance, “An Ordinance of the City Council of the City of Milpitas Amending Chapter 6 of Title III of the Milpitas Municipal Code Relating to Massage Establishments.”

(1) Motion: to waive the first reading beyond the title of Ordinance No. 172.5

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

Motion carried by a vote of:

AYES: 4
NOES: 0
ABSENT: 1 (Gomez)

(2) Motion: to introduce Ordinance No. 172.5

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

Motion carried by a vote of:

AYES: 4
NOES: 0
ABSENT: 1 (Gomez)

RESOLUTIONS

Two resolutions were adopted on the consent calendar.

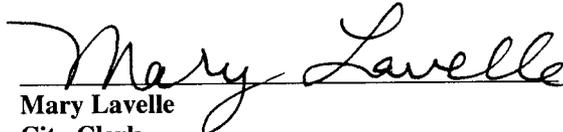
BID & CONTRACT

One item was approved on the consent calendar.

ADJOURNMENT

Mayor Livengood adjourned the City Council meeting at 8:42 PM, after inviting all to celebrate a safe Halloween and invited everyone to the City's Spooktacular Halloween event at Great Mall.

The foregoing minutes were approved by the Milpitas City Council as submitted on November 3, 2009.



Mary Lavelle
City Clerk