

**MEETING MINUTES  
CITY OF MILPITAS**

**Minutes of:** Regular Meeting of Milpitas City Council  
**Date:** Tuesday, November 16, 2010  
**Time:** 7:00 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 7:00 PM.

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

**ABSENT:** None

**PLEDGE**

Mayor Livengood led all in the pledge of allegiance.

**INVOCATION**

None.

**MINUTES**

Motion: to approve City Council meeting minutes of November 2, 2010, as submitted

Motion/Second: Councilmember Giordano/Councilmember Polanski

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

**SCHEDULE OF MEETINGS**

Motion: to approve the Council Calendar/Schedule of Meetings for the months of November and December 2010, as amended

City Manager Tom Williams noted two changes: the Council's Rules Subcommittee meeting was scheduled to meet on Monday, November 22 at 4:30 PM, and the Veterans Commission meeting in December was canceled.

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

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

**PRESENTATIONS**

Mayor Livengood invited the first speaker to the podium.

Ms. Elaine Hebert, President of the Northern California Solar Energy Association, presented two awards to the City, for most photovoltaic (PV) systems installed in the community and for 2009, Milpitas was awarded as first place winner - for a medium sized city - for the most solar watts installed and most watts per capita. She presented the Mayor with two plaques.

The City of Milpitas Neighborhood Beautification Awards were announced for Milpitas residence and business facilities, along with special category winners. This was the 11<sup>th</sup> annual awards ceremony. Mayor Livengood presented certificates of recognition to both the Honorable Mention homeowners and the winners. City Council took a brief break to celebrate with the award winners and families, and enjoyed refreshments.

**PUBLIC FORUM**

Denny Weisgerber and Ray Serena, from the Board of Directors of the Parks & Recreation Foundation, thanked the City for its past support of the annual *Festival of the Trees* fundraising event to be held again at the City Hall rotunda on Thursday, December 9 at 5:30 – 8:30 PM.

Bob Marsh, a Milpitas veteran and Terrace Gardens resident, came by to say what a very nice city Milpitas was to live in. He felt the City was doing a great job and he enjoyed living here. Also, he reported that Comcast cable television charges were going up lately. He wanted to find out, or suggest, that there be a senior citizens rate for monthly cable costs.

**ANNOUNCEMENTS**

City Manager Tom Williams announced the annual City of Milpitas Tree Lighting ceremony and celebration to be held on Wednesday, December 1 at 7:00 PM.

Vice Mayor McHugh reported that last Monday he and Councilmember Giordano attended the DARE graduation at Merryhill School. To the Mayor and city staff, he offered congratulations on an excellent Veterans Day ceremony held on Thursday, November 11.

**ANNOUNCEMENT OF CONFLICT OF INTEREST**

Councilmember Gomez, said on Item No. 2, he would abstain because the retirement plan of which he was a member, owned the building that would house the badminton business.

**APPROVAL OF AGENDA**

Motion: to approve the agenda, as submitted

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 amended

An audience member requested removal of Item No. 16 from the consent calendar, and Councilmembers Polanski and McHugh concurred with this request.

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

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

- \* 6. Commission Appointment Re-appointed student Patricia Do to a one-year term on the Milpitas Youth Advisory Commission, which would expire in September 2011.
- \* 9. Pavement Undulator report Received staff report on the Pavement Undulator policy.
- \*10. Ordinance No. 113.22 Waived the second reading and adopted Ordinance No. 113.22 (fire code).
- \*11. Ordinance No. 65.140 Waived the second reading and adopted Ordinance No. 65.140 (building code).
- \*12. Resolution for Funding Adopted Resolution No. 8046 authorizing the filing of an application for Congestion Mitigation and Air Quality (CMAQ) Improvement funding and committing the necessary non-federal match funds, stating assurance to complete the Abel Street Transit Connection Project.
- \*13. Development Fees Resolution Adopted Resolution No. 8047 making findings for unexpected development fees and review, and accepting the annual developer fee disclosure information.
- \*14. Resolution for Office Max Adopted Resolution No. 8048 authorizing the City Manager to execute a contract with Office Max for the purchase of office supplies, for the annual not-to-exceed amount of \$95,000 and incorporate by reference the original solicitation, terms, conditions and pricing of the City of San Jose's contract.
- \*15. Award Contract to Fermin Sierra Construction Awarded a construction contract to Fermin Sierra Constructions, Inc. for Phase 6 of the Sewer Deficiency and Structural Correction Program, Project No. 6073, in the total amount of \$742,900, including add alternate Package C.

**PUBLIC HEARINGS**

1. 2010 Public Health Goals  
Report for Public Water System

Utility Engineer Kathleen Phalen explained the requirement to hold this hearing as required by state law and to adopt public health goals, which were not the same as regulatory standards. She explained where there were minor examples in Milpitas of exceeding contaminant levels in drinking water, e.g. for coliform bacteria and tiny amounts of lead in older home plumbing.

Vice Mayor McHugh asked about running the hot water tap and how long was safe for cooking. Staff responded it was better practice to use cold water and then boil it, for safety if concerned.

Councilmember Giordano commented on the small number of older homes in Milpitas with the possibility of lead in pipes. She asked staff about notifying homeowners, by directing those specific homeowners to information on the website.

Mayor Livengood asked about dates of the water samples and why those were going back to 2007. Ms. Phalen explained that for lead and copper, the state required those be sampled every three years. There was ongoing testing occurring in the City.

Mayor Livengood then opened the public hearing.

Robert Marini, Milpitas resident, asked how much lead and carcinogens were in the water and what was normal. He essentially wanted to know how safe was local water. Ms. Phalen responded that 15 parts per billion was the standard as to what was safe for contaminants. .02 ppb was the public health goal, so the area in-between was where the issues in the report were identified.

Karen Kolander, director of Milpitas Food Pantry and Milpitas resident, asked about older homes and said many senior citizens do not go on the web or computers. It would be best to notify them via the water bill itself, in the mail.

Dan Manassau, Milpitas resident, wondered if there was any way to get lead out of pipes by reverse osmosis. Staff was not sure if that would remove lead, but there could be filters that would take care of it.

(1) Motion: to close the public hearing

Motion/Second: Councilmember Giordano/Councilmember Polanski

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

(2) Motion: to accept the City of Milpitas 2010 Public Health Goals report and direct staff to notify the state of California Department of Public Health of the public hearing conducted this evening

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

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

2. Appeal of Planning  
Commission Approval of  
Badminton facility

Councilmember Armando Gomez left the Chambers to abstain from this item.

Planner Cindy Hom explained the permit authorized by the Planning Commission for an indoor badminton facility on Main Street. The application for the new business met all requirements and environmental regulations. She expressed the reasons for the appeal by a competitor badminton company.

Councilmember Giordano inquired about the vote by the Planning Commission on this project and was informed that the vote was unanimous.

Vice Mayor McHugh asked about any liability, regarding the four-foot distance between badminton courts, noted in the appeal. City Attorney Ogaz replied that the Council maintained its regulatory authority, and had proper rights to vote to authorize or deny the appeal.

Mayor Livengood opened the public hearing for comments. He permitted the first two speakers, appellant and the project applicant, to speak to the Council for no longer than five minutes.

The appellant spoke first. Mr. Dennis Chiu of Bay Badminton on Adrian Road in Burlingame, stated his concerns were that the four-foot space between courts was too short, when competition courts were 6.5 feet. He demonstrated using an actual badminton racquet. Recreation and competitive badminton games were played as doubles. He further commented that parking outside the courts would be exceeded, and parking demand could increase a lot during tournaments. Additionally, he posed questions about safety and liability of the applicant.

Representing the applicant, Architect Jim Moreland of San Jose noted that all City requirements were met already. Mr. Fu Koo was the applicant, an expert on badminton. He discussed the court spacing at four feet was acceptable, noting that the shuttlecock in badminton games was not like a tennis ball. Players signed a waiver of liability before starting to play. He operated another facility in Sunnyvale, where space between courts was 4.5 to 5 feet. Finally, he offered that senior citizen discounts could be made available to play.

Harry Kan, a Milpitas business owner, was a professional badminton player of over 30 years. Safety and parking issues would be of concern.

(1) Motion: to close the public hearing

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

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

Councilmember Polanski asked about other locations of Bintang, where distance between courts was more than proposed in the Milpitas location. Staff explained that the columns in the building affected the number and layout of courts that would be set up. The structure dictated the spacing of the courts basically.

Ms. Polanski asked regarding the parking issue: was there a reason applicant did not go to other businesses about joint use with neighbors? Staff replied there were certain criteria for that in Milpitas, and hours of operation would prohibit shared use.

Mayor Livengood commented that the burden was on the appellant at this hearing to show that the Commission's decision was not correct. That would be necessary for the Council to consider turning over approval already voted by the Planning Commission.

(2) Motion: to adopt Resolution No. 8043 affirming the Planning Commission's approval of a Conditional Use Permit No. UP 10-0006 for the Bintang Badminton Academy Project, to allow for the operation of a 35,930 square foot indoor badminton facility at 746 S. Milpitas Blvd.

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

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

3. Funding Priorities for  
Community Development Block  
Grants for FY 2011-2013

Principal Housing Planner Felix Reliford explained some of the history of Milpitas becoming a CDBG grant-funded city. The Community Advisory Commission, working along with staff, provided the recommended funding priorities, based on the previous two years.

Councilmember Giordano asked Mr. Reliford what he thought the future held for CDBG funding. Less money was available in each of the last four years, showing the trend for less funding by the federal government. It was up to Congress on allocation of funds.

Councilmember Gomez inquired, with regard to Milpitas Food Pantry and its possible funding strategies for the future, how did that topic fit into priorities. Staff replied very well, into the two priorities (Senior Citizens and homeless services).

Mayor Livengood opened the public hearing, and heard no comments.

(1) Motion: to close the public hearing

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

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

(2) Motion: to approve funding priorities (same as FY 2008-10) for CDBG funding

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

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

4. Actions Related to the  
Milpitas Square Development  
Plan

Senior Planner Sheldon Ah Sing presented the proposal for the Milpitas Square development, and the request for a General Plan and Zoning Amendment to change land use to mixed use, a Development Agreement, a Master Development Plan and Guidelines. Future phases would be reviewed by the Planning Commission for consistency. The proposed project was on a 17-acre site adjacent to Cisco, near another new project, Landmark Tower. Zoning was mixed use for residential, commercial and retail plans throughout the six buildings. There was a gas line in the area, and the developer agreed to have a disclosure for future tenants/homeowners.

The proposed 25-year Development Agreement called for participation in the Community Facilities District No. 2008-1.

Mr. Anthony Morici, a partner in Milpitas Square, talked about the future for a vision of this updated, vibrant shopping center. He thanked the City staff for the long amount of time it took to process this application.

Mr. Rick Williams, San Francisco architect of the Van Meter, Williams and Pollock firm, displayed visuals to explain the project's design. He discussed design guidelines, for what could potentially be large, high density buildings. The theme "a contemporary place for living and shopping" was expressed in response to Planning Commission question, envisioning a new mixed use community. He showed a simulated movie displaying what the facility was expected to look like.

Councilmember Gomez was very impressed with a lot of potential. The concern he had – putting a lot of residential in this area with other projects, with exceptions for open space and fees – was where were playgrounds, space for playing sports, etc. He did not



(1) Motion: to close the public hearing

Motion/Second: Councilmember Polanski/Councilmember Giordano

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

(2) Motion: to adopt Resolution No. 8044 approving the General Plan Amendment No. GP10-0003 and Specific Plan Amendment No. ST10-0001, consisting of text changes to incorporate updates to the Park and Recreation Master Plan and the Milpitas Bikeway Master Plan, and replacement of other outdated exhibits, tables, and figures

Motion/Second: Councilmember Polanski/Councilmember Giordano

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

**UNFINISHED BUSINESS** One item was approved on the consent calendar.

**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 9:01 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 Agency meeting minutes of November 2, 2010, as submitted

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

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, as submitted

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

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

**RA4. Accept CAFR and Related Audit Reports for FY 2009-10** Finance Director Emma Karlen presented the summary of the Audit and Financial Statements for the concluded Fiscal Year 2009-10. She explained the few instances of non-compliance findings with regard to Community Development Block Grant funding, central contractor registration, and the block grant program of the federal Department of Energy ARRA Energy Efficiency and Conservation grants.

Ms. Karlen reviewed the financial statement previously presented in September (with no changes, essentially). Ultimately, there was no use of reserve funds to balance last year's budget, primarily due to cost savings experienced by the staff.

Mayor Livengood asked if the noted minor non-compliance issues ever arose in the past. Ms. Karlen responded that it was not tested by auditors in previous years.

Vice Mayor McHugh congratulated staff on an excellent audit. He asked questions on the Redevelopment Agency portion.

Councilmember Polanski noted that some regulations had changed, and that may have generated some of the comments received. Security with regard to the City Council calendars online was important and to ensure transparency of those.

Motion: to accept the City's Comprehensive Annual Financial Report, the Redevelopment Agency Component Unit Financial Statements, and other related Annual Audited Reports (refer to above) for the fiscal year ended June 30, 2010

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

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

**RA5. Financial Status Report for First Quarter 2010-11**

Finance Director Emma Karlen provided the quarterly financial report for the first quarter of the current fiscal year. She explained categories where expenditures were higher at the beginning of the year. The report showed some slight increases in revenues (0.45% above budget). Overall, General Fund expenditures were reviewed for the first quarter compared to budgeted amounts.

Motion: to receive the financial status report for three months ended September 30, 2010

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

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

**\*RA6. RDA Annual Report**

Accepted the Milpitas Redevelopment Agency Fiscal Year 2009-10 Annual Report.

**\*RA7. Resolution Related to Paragon Residential**

Adopted Resolution No. RA394 approving the amendment to the Owner Participation Agreement and Regulatory Agreement with Western Pacific Housing.

**\*RA8. Resolution of Initial Acceptance Project No. 8176**

Adopted Resolution No. RA393 / 8045 granting initial acceptance of the new Senior Center, Project No. 8176, subject to a one year warranty period and reduction of the faithful performance bond to \$788,522. Approved Amendment No. 5 to the agreement with Noll & Tam Architects in the amount of \$43,462, Project No. 8176, subject to approval as to form by the Agency Counsel.

**\*RA9. Contract for HVAC at Milpitas Library**

Awarded a service contract and authorized the Agency Executive Director to execute a service contract with Environmental Systems Inc. for HVAC repairs at the Milpitas Public Library, Project No. 8162, in the amount of \$40,000

**\*RA10. Contract Change Order with Median Mulch & Street Tree Maintenance**

Authorized the Agency Executive Director to execute a contract change order with Forster & Kroeger, Inc. in the amount not-to-exceed \$3,000, for maintenance on the Great Mall Parkway, Project No. 2001.

**RA 11. ADJOURNMENT**

Chair/Mayor Livengood adjourned the Redevelopment Agency meeting at 9:22 PM.

**REPORT OF MAYOR**

One item was approved on the consent calendar.

**NEW BUSINESS**

One item was approved on the consent calendar.

**7. Economic Development Report**

Economic Development Director Diana Barnhart reviewed and updated details of her written report to Council on business and economic topics. Additionally, she noted staff had talked with the owners of McCarthy Ranch shopping center in Dallas, and expressed a desire to meet. Lease restrictions on some tenants in that center were a concern.

Solyndra was planning to shut down its Milpitas manufacturing site, as the product there was outdated already. The company was moving all staff to its new Fremont facility

along interstate 880.

Mayor Livengood noted the nexus between those who lease retail space and its tenants. The City needed to be pro-active with the owners of the McCarthy Ranch retail site and to pay special attention. He felt some of those vacancies existed beyond solely due to the status of the current economy.

Motion: to receive the monthly economic development report from the Economic Development Director

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

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

Councilmember Polanski was absent from the dais for a few minutes, including at the time of this vote.

## 8. Citizens Budget Task Force Report

Chair Joseph Weinstein thanked the members of the Task Force, the City Council and the city staff for help with gathering so much information for the group's benefit.

He presented an overview of process the Task Force used to arrive at recommendations to reduce the City's ongoing annual budget deficits. The group focused much on employee salary and benefits since that made up 73% of expenditures. The Task Force had four areas of focus: (1) departments, (2) programs, (3) revenue and expenditures, and (4) salaries and benefits.

The task force emphasized rights of the taxpayers with regard to City expenditures, and budgeting. One recommendation they desired was to have one Task Force member on the negotiating team, when city management was conducting labor negotiations for the union Memorandums of Understanding.

Mr. Weinstein had distributed to the City Council and staff a printed version of the powerpoint presentation he gave at the meeting, identifying the range of actions recommended to the City Council.

Mayor Livengood sincerely thanked Mr. Weinstein and the other five members of the Task Force for the tremendous report. It was over and above his expectations. He owed a debt of gratitude to the group for its work and efforts, on behalf of the taxpayers.

Vice Mayor McHugh thanked the Chair for his excellent and formative report. He asked if the savings identified was assisted or confirmed by staff. City Manager Williams replied yes, on the facts and numbers, but not the recommendations. Mr. McHugh contemplated when savings would be realized. He also wished for some kind of an "achievability index" from high to low or medium, and then to work with employees to achieve some of those.

Councilmember Gomez commended Mr. Weinstein on an excellent job done by the group. He asked staff about timing of the annual budget workshop for 2011, and wondered if the recommendations could be studied and reviewed on time for that meeting. The City Manager responded yes.

Councilmember Polanski thanked Mr. Weinstein and task force members for the critical information and recommendations that have come from their work.

Councilmember Giordano stated her thanks for the hours put in on the report. They had a view of a more simplistic approach to the budget issues that she found helpful.

Motion:

- a) with thanks to the Citizens Budget Task Force, prepare for the new Mayor and Council to present commendations to those members for all their work, and
- b) that the City Council at the same meeting, adopt a game plan on what it would do with this information, which was appropriate for the new Mayor and Council to do and either set up a workshop, or whatever form that the new Council wanted, so this information did not simply get shelved. There should a game plan time on how it would be dealt with and when, so it was time specific, and allow for an opportunity for the public to speak on the plan.

Motion/Second: Mayor Livengood/Vice Mayor McHugh

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

**ORDINANCES**

Two ordinances were approved on the consent calendar.

**RESOLUTIONS**

Three resolutions were adopted on the consent calendar.

**BIDS AND CONTRACTS**

One item was approved on the consent calendar.

16. Agreement with Cascadia Consulting Group

Utility Engineer Kathleen Phalen reported on the recommendation to Council to approve the expense for a consultant contract, in agreement with prior Council direction, for a study and public outreach plan on the issue of polystyrene containers waste in Milpitas.

The Mayor invited public comment on this item, but no speakers came forward.

Motion: approve a budget appropriation drawn equally from the General Fund and Solid Waste Reduction fund for a total amount of \$38,270, and authorize the City Manager to execute an agreement with Cascadia Consulting Group Inc. for a study on a ban on polystyrene food containers and single-use plastic bag.

Motion/Second: Vice Mayor McHugh/Councilmember Gomez

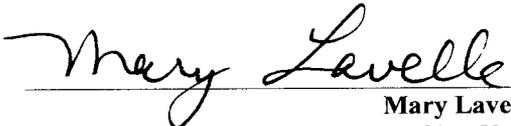
Motion carried by a vote of: AYES: 4  
NOES: 1 (Polanski)

Councilmember Polanski stated her no vote was consistent with the last time this issue came before the City Council.

**ADJOURNMENT**

Mayor Livengood adjourned the City Council meeting at 10:27 PM.

**The foregoing minutes were approved by the Milpitas City Council as amended on December 7, 2010.**

  
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Mary Lavelle  
City Clerk