

**MEETING MINUTES  
CITY OF MILPITAS**

**Minutes of:** Regular Meeting of Milpitas City Council  
**Date:** Tuesday, January 18, 2011  
**Time:** 6:00 PM  
**Location:** Council Chambers, Milpitas City Hall,  
455 East Calaveras Blvd., Milpitas

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**ROLL CALL**

Mayor Esteves called the meeting to order at 6:00 PM. City Clerk Lavelle noted the roll.

**PRESENT:** Mayor Esteves, Councilmembers Giordano and Polanski

**ABSENT:** Vice Mayor McHugh and Councilmember Gomez were absent at 6:00 PM. They arrived at 6:01 PM and 6:02 PM and were present for Closed Session.

**CLOSED SESSION**

City Council convened in Closed Session to discuss two matters: labor negotiations with two employee groups, and one potential case of litigation.

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

**ANNOUNCEMENT**

None.

**PLEDGE**

Councilmember Giordano led all in the pledge of allegiance.

**INVOCATION**

Mayor Esteves offered a prayer to start the meeting..

**MINUTES**

Motion: to approve City Council meeting minutes of January 4, 2011, as amended

Vice Mayor McHugh requested two edits to the meeting minutes: (1) he commented that he'd requested a date for the checklist of items regarding PG&E work (page 3), and (2) on page 5, a correction was needed to note 4 ayes on the Planning Commission appointments vote.

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

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

**SCHEDULE OF MEETINGS**

Motion: to approve the Council Calendars/Schedule of Meetings for January and February 2011

Vice Mayor McHugh stated he would attend a Sunol Smart Carpool lanes meeting on February 7 at 9:30 AM in Oakland, and Councilmember Giordano had attended a County Library Joint Powers Authority Finance subcommittee meeting on this day at 11:00 AM.

Motion/Second: Councilmember Giordano/Councilmember Polanski

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

**PRESENTATION**

Mayor Esteves presented commendations to the six members of the Citizens Budget Task Force, which concluded work in the fall of 2010. Four members were present to receive the awards.

**PUBLIC FORUM**

Isaac Hughes, Milpitas resident, displayed a note overhead regarding a real estate television show on Milpitas Community Television. He requested agenda items No. 3, 4 and 10 to be removed

from the consent calendar. He also discussed the Finance Subcommittee and the open government ordinance.

Councilmember Giordano asked whether the City Attorney brought the letter from the state Fair Political Practices Commission received about two years ago. City Attorney Ogaz stated the memo noted that Ms. Giordano was not disqualified from participating on votes regarding Milpitas Cable Television.

Karen Kolander, Milpitas Food Pantry, thanked the City for all the support given to that organization over the last year. She informed the City that the Food Pantry must vacate its current building by July and needed to find a new location by this summer.

Brian Riley, of Rafles West management, was at the podium representing a client, asked if the City would address the issue of medical marijuana dispensaries and the economic impact of those any time soon.

Frank DeSmidt, Milpitas Rotary Club, invited Councilmembers and the public to the annual Gene Schwab city employee of the year lunch on Monday, January 31 at 12:00 at Embassy Suites.

## **ANNOUNCEMENTS**

Vice Mayor McHugh commended Ms. Debra Lax of Milpitas Community Television, who responded to a last minute request from the Milpitas Rotary Club recently.

Mayor Esteves invited residents to continue to participate on Commissions. All were welcome to apply. He said that a few residents served on more than one Commission, and he planned to write a letter to them to resign from one in order to increase participation. He'd been working on assignments to outside agencies and asked Councilmembers to send him their choices.

Councilmember Gomez asked about a list of outside agencies, and Mayor said he had it from the City Attorney and could distribute it. Councilmember Polanski suggested it be e-mailed.

## **ANNOUNCEMENT OF CONFLICT OF INTEREST**

Councilmember Gomez stated he would abstain from participating and voting on Items No. 8 and No. 9, since both involve his current employer City of San Jose.

## **APPROVAL OF AGENDA**

Motion: to approve the agenda, as amended

City Manager Williams noted: (1) staff requested removal of Item No. 2 from the agenda, and this issue would be heard at a future date, (2) on Item No. 4, the Mayor recommended Mr. Kashmir Gill to serve as Alternate No. 2 on the Recycling Commission and (3) on Item No. 4, a correction to the term expiration for Michelle Manassau on the Community Advisory Commission, which would be in January 2013. He also pointed out that today the City had received a letter from McCarthy Ranch on Item No. 8 and it was distributed on the dais to Councilmembers.

Vice Mayor McHugh requested, since there were people from other agencies present, to hear Items No. 8 and No. 9 following Item No. 1.

Mayor Esteves reported that on his list of Council liaison assignments, Terrace Gardens was left out and he wanted to reaffirm Councilmember Giordano on that board.

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

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

## **CONSENT CALENDAR**

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

Councilmember Polanski asked to remove Items No. 3, 4, and 10 at request of the public.

Vice Mayor McHugh requested to remove Items No. 5 for a member of the audience.

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

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

\*6. Public Art Committee Approved the Public Art Committee's 2011 Master Plan.

\*11. Remove CAC member Removed Mr. Viramrinder Meharu as a voting member on the Community Advisory Commission, thus creating a vacancy with an expiration date of January 2012.

## **PUBLIC HEARINGS**

1. 2011 COPS Grant Police Commander Steve Pangelinan explained the request to accept the \$100,000 grant in COPS funding, to improve police resources. He detailed items that police hoped to purchase with the grant funds.

Councilmember Giordano asked about DUI work and checkpoints and whether the grant funds could be used for community outreach on awareness of crime prevention. Police staff replied that there were separate grants for enforcement on that subject. Also, this grant would include work done on the website for realtime crime information online.

Vice Mayor McHugh supported all uses on the list for the grant money. He commended the "Every 15 Minutes" program at the high school in particular.

Mayor Esteves asked multiple questions about proposed expenditures for the items on the list presented by the Police Department to spend on resources. Mr. Pangelinan explained each of those.

On the EM finders program, Mayor Esteves suggested to the police that residents pay a deposit, in order not to lose the finder unit. Commander Pangelinan agreed this was possible.

Mayor Esteves next opened the public hearing for comments.

Isaac Hughes, Milpitas resident, commented on grant funds whenever they were received by the City, and these always cost the taxpayers more money. Those would have an affect on residents. He questioned the value of realtime crime information on the City website.

Mayor Esteves pointed out that the City Council was very prudent at spending the City's money and wanted to prioritize expenses, and be certain that everything counted.

(1) Motion: 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 accept the 2011 Citizen Options for Public Safety (COPS) grant in the amount of \$100,000 and authorize appropriation in that amount to the Police Department budget

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

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

Councilmember Polanski supported the vote on this grant, and wanted the public to know that grants were given out by many agencies all the time. Every city could apply for those



Motion/Second: Vice Mayor McHugh/Councilmember Giordano

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

5. Arts Commission Workplan This item was removed from the consent calendar.

Motion: to approve the 2011 Arts Commission Work Plan

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

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

## NEW BUSINESS

Two items were approved on the consent calendar.

7. Economic Development update

Economic Development Manager Diana Barnhart provided the City Council with updated information on pertinent economic development activity. A highlight was that the retail sector experienced a 3.1% increase year over year, and luxury sales noted a high increase.

Topics she covered included: local development activity, work program of the Economic Development Commission, a new RFP was out for the auto dealership site at 950 Thomson Court, the Great Mall showed year over year improvement, and Small Business Development Classes have had a great turnout.

Councilmember Polanski asked about effects of the Governor's proposed budget and looked forward to any City response to elements of it. Staff reported that would be at the next Council meeting.

To respond to a remark from the City Manager, Planning Director James Lindsay announced an upcoming meeting on January 27, with neighborhood residents, regarding parking concerns raised near the Terra Serena development.

Mayor Esteves responded to Ms. Barnhart that staff should seek input from the Council on these topics, on upcoming issues that could be solved, pending problems, and then have discussion so the actions and her report could be forward-thinking. Her written report could continue to be as provided in the past, with items that were completed.

Motion: to accept the Economic Development update from the Economic Development Manager

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

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

8. Odor Control Report

This item was heard following Item No. 1.

Principal Engineer Kathleen Phalen provided an oral report with information on sources, waste and odor regulations, action plan and complaint process. Odors were dealt with as a public nuisance, while there were no numerical limits regarding odor complaints.

Ms. Phalen provided overhead slides displaying Newby Island waste processing plant and the Water Pollution Control Plant, which were significant causes of odor in Milpitas. The composting pad at the landfill and the drying pads at the plant were identified.

1-800-334-6367 is the complaint toll-free number for residents or businesses to call in and report offensive odor, location, and description. In the past, the City had sent out a postcard to residents so they had the number handy, and staff proposed to send out that

information anew. Rapid notification reports were provided daily to City staff. Staff explained how Bay Area Air Quality Management District could impose fines on odor generators of confirmed complaints, following investigation.

Some former sources of odor had been eliminated in the past few years, including the Zanker Landfill (with no more compost source) and also no more Cargill salt ponds.

Next, Ms. Phalen introduced Wayne Kino from BAAQMD, John Stufflebean, Director of Environmental Services for the City of San Jose, and Rick King, General Manager of Allied Waste. The three men were available to answer questions.

Councilmember Giordano asked, whether in dealing with San Jose, did that agency believe there was an odor problem and Ms. Phalen replied yes. The Councilmember asked what San Jose had done in the proposed Plant Master Plan to address odor. Ms. Phalen noted it would mitigate odor and the report on that was next on the agenda. For example, they have eliminated multiple handling of biosolids, and added deodorants.

Vice Mayor McHugh stated there was no argument that this was a quality of life issue for the City and neighboring communities. Regarding the rapid response program, he was not sure of its benefit. He would like to re-initiate the monthly odor report, and have a consent item on the Council agenda every month at the first meeting.

Councilmember Polanski felt it was important to have the odor reports again but maybe quarterly as a live staff report. Sometimes odor was more prevalent than others, such as this evening at 4:50 PM. She had received more complaints lately. With regard to San Jose, the latest look at the odor issue may be due to its developments planned in north San Jose. She supported sending the postcard to residents and then in six months, put an insert in utility bills.

Ms. Phalen reported it was estimated to cost \$4,500 to send out postcards to all residents. It was approximately \$3,500 to include an insert with utility bills to 19,500 residents.

Mayor Esteves inquired on the complaints received by the Air District, whether those were recorded right away and he was interested in the number of calls received. Mr. Kino explained that all calls were answered by live staff and entered into the database, after a line of questioning was completed. The Mayor wanted to find in the report of complaints, a record of the number of complaints, confirmed and unconfirmed. He requested that from staff. The Mayor asked additional questions on the topics of Best Management Practices, permit for the compost facility, and response to the complaints.

Mayor Esteves invited the various agency staff to come forward and state what they were doing for the City of Milpitas and its residents.

Rick King, Allied Waste manager of the Newby Island landfill, stated he was a resident of Milpitas, and highlighted actions taken to address odor control at the facility.

John Stufflebean, San Jose's Director of Environmental Services, addressed activities performed at the Water Pollution Control Plant to reduce odors. Significantly, the first thing done was to cover previously open air tanks. The major change proposed for the new improved plant was to enclose the entire plant process.

Wayne Kino of the BAAQMD, identified three inspectors assigned to Milpitas, who were familiar with companies and businesses here. Odors were subjective, but the inspectors investigate to find the source in order to obtain compliance. The District had no jurisdiction over compost facilities, which generated some of the odor.

Mayor Esteves felt that there should have more or less been pinpointed sources of odors known already. Mr. Kino replied that sources were not static, these change over time and his agency issued citations of public nuisances because sources must manage those.

Mayor Esteves invited the public to address the Council.

Isaac Hughes, Milpitas resident, commented that the staff of the agencies did not bring any records or reports here with them. He referenced public records, chemicals, toxicity, and the causes of odors which must be addressed.

The Mayor was happy with the information presented. He asked Mr. Kino to respond to the toxicity question raised, and he responded that there was no public health concern about chemicals at the various sites in Milpitas, by monitoring specific compounds.

Vice Mayor McHugh asked staff to relay details of the public meeting on January 29, sponsored by San Jose, seeking input on the new Master Plan for the Treatment Plant.

Councilmember Polanski requested that staff take advantage of the use of the free printed information line on the City's utility bill, at least a few times each year, to publicize the 1-800 number for odor complaints.

Motion: receive staff report and direct staff to distribute the Bay Area Air Quality Management District complaint number to the public via mailed postcard, with a follow up notice on utility bills, and initiate monthly odor reports on the first meeting of each month (did not have to be on consent)

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

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

#### 9. Water Pollution Control Plant Alternative Recommendation

John Stufflebean, Director of Environmental Services and director of the Water Pollution Control Treatment plant owned by the cities of San Jose and Santa Clara serving Milpitas, addressed the City Council on the draft Master Plan with a recommended alternative comprising two main areas, technical and land use. Rehabilitation was the main reason for the Master Plan.

Four goals were established for these areas: operational, economical, environmental, and social to be accomplished via a robust public process.

The technical alternative was a 30-year capital program costing an estimated \$2.2 billion with Milpitas' share pegged at \$168 million (7.65% of total). He identified some of the technology improvements in the liquid and solid waste areas.

On the land use side of the plan, he displayed a map of the plant land area with recommended uses. Social uses would include hiking/walking trails, an education center, a nature center, and recreational activity. He highlighted an upcoming community meeting scheduled on January 29 in Milpitas to educate the public about the plan.

Councilmember Polanski asked Mr. Stufflebean what was the plan's timeline for the economic development section, and he replied over 30 years.

Vice Mayor McHugh was hoping the business case would be stronger than suggested. He was concerned with odor control ongoing issues, as not state of the art. There might be economic incentive for lands close by the plant to deal with odors. He strongly supported efforts to expedite the reduction of known odors. The costs for improvements would impact ratepayers, he noted, and hoped that ratepayers could accept that.

Mayor Esteves asked about the lands in a flood zone and how that was dealt with. Mr. Stufflebean noted all surrounding the plant were levees to protect the plant where no one wanted flooding. There would be future pumping of the end fresh water product, and the

distribution could be moved to different locations (not necessarily all of it flowing to the bay).

The Mayor inquired about funding issues for this Master Plan. When he asked how Milpitas would handle it, Vice Mayor McHugh responded via rate increases. City Manager Williams commented staff was working with the City of San Jose about various funding mechanisms and approaches for financing implementation of the Plant Master Plan, with an analysis expected to be ready in the late summer. Possible resources could include rate increases, pay-as-you-go plan or even a possible bond issue.

Mr. Williams further responded to the Mayor on issues of traffic impacts, noted in the EIR segment of the plan, including required mitigations.

Mayor Esteves invited the public to address the City Council.

Robert Marini, Milpitas resident, commented on the issue of how to pay for the plant upgrade. It would cost \$8,400 per person in Milpitas. He felt officials marginalized the right to vote, where residents must overcome 8500 votes to increase taxes. He sought a change on how to vote these issues, since they would put people out of their homes.

Joey McCarthy, representing McCarthy Ranch, stated his family and company had been suffering from odors since the 1950s. He came to express concerns they continued to have about ongoing problem odors. He'd submitted letters that displayed that the community was concerned about the odors and wanted those to be stopped. He asked, who isn't doing their job here? He felt some of the comments don't make sense. McCarthy Ranch had hired its own consultants who believed the odor could be controlled over four to five years at a cost estimate of \$140-150 million to address the problem immediately, not over the next thirty years.

Mayor Esteves made some further comments in response to Mr. McCarthy.

Motion: to receive report on the Water Pollution Control Plant proposed Master Plan, and encourage representatives from the City of San Jose to do all possible to expedite handling of odor problems, and to contact colleagues on other City Councils to move up odor solutions

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

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

#### 10. Usage Charges for Milpitas Community Television

This item was removed from the consent calendar.

Information Services Director Bill Marion explained the request and need to act, based on the terms of the existing agreement between the City and Milpitas Community Television (MCTV). He discussed terms of the agreement, including equipment use terms. If use charges were to be imposed or changed, those would come to the City Council first for approval. That was the item before the Council at this meeting.

Mayor Esteves asked the public to speak to the Council.

Councilmember Giordano first asked that residents stay focused on the agenda item specifically when addressing Council.

Milpitas resident Isaac Hughes held up a copy of a purchase order for \$31,000. He read a letter to the City Manager from Steve Munzel, chair of the Board of Milpitas Community Television. He stated there was no proof of hours worked by the station manager Debra Lax. Community organizations would pay for services at the station, and he had many

further comments on policy and procedure of the television station.

Mayor Esteves asked Mr. Marion to respond to the speaker after the meeting.

Councilmember Polanski would like a breakdown of the costs, as mentioned by the speaker. She asked also for a copy of agreement, which staff agreed to provide to all City Councilmembers.

Motion: to approve the proposed usage charges as requested by Milpitas Community Television

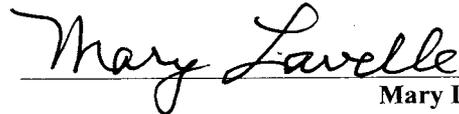
Motion/Second: Councilmember Gomez/Vice Mayor McHugh

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

**ADJOURNMENT**

Mayor Esteves adjourned the City Council meeting at 10:20 PM.

**The foregoing minutes were approved by the Milpitas City Council as submitted on February 1, 2011.**

  
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Mary Lavelle  
City Clerk