

**MEETING MINUTES
CITY OF MILPITAS**

Minutes of: Regular Meeting of Milpitas City Council
Date: Tuesday, March 1, 2011
Time: 6:00 PM
Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas

ROLL CALL

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

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

ABSENT: Councilmember Giordano was absent at roll call and arrived at 6:06 PM.

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 7:06 PM.

ANNOUNCEMENT

None.

PLEDGE

St. John's School Cub Scout Pack #270 presented colors and led the pledge of allegiance.

INVOCATION

Councilmember Giordano noted that April 22 would be "Earth Day" next month, and she read a quote from Chief Seattle regarding the Earth.

MINUTES

Motion: to approve City Council meeting minutes of February 8 and 15, 2011, as amended

For the minutes of February 15, Vice Mayor McHugh requested to clarify his comments that night regarding fees waived for Relay for Life, regarding the correct total amount. Later in this meeting, he corrected himself anew, based on information provided by staff.

In the minutes of February 8, Councilmember Polanski remarked that Councilmember Gomez was referred to as "Mr. Gomez" in part, and she asked for it to be consistent.

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

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

SCHEDULE OF MEETINGS

Motion: to approve the Council Calendars/Schedule of Meetings for March 2011

Motion/Second: Councilmember Polanski/Councilmember Gomez

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

PRESENTATION

Mayor Esteves proclaimed Saturday, March 21, 2011 as *Arbor Day* in Milpitas. The proclamation was accepted by City Maintenance Worker Bill Elliott, a certified arborist.

PUBLIC FORUM

Victoria Chavez, Milpitas resident, had suffered abusive behavior by Isaac Hughes. She wanted to provide openness and to shed light, according to public records as he had done before the City Council many times. She commented about Mr. Hughes and some past history and incidents. She provided copies of public documents to the City Clerk.

Carol Kassab, CEO of the Milpitas Chamber of Commerce, announced the Chamber's Crab Feed event that would be held on Friday, March 4 at Napredak Hall.

Robert Marini, Milpitas resident, wanted to address Item No. 2 later. He also wanted to thank the Mayor and Vice Mayor for having further discussion on the water/sewer rates, and thanked the City Attorney for clarifying votes on water sewer rates.

ANNOUNCEMENTS

City Manager Williams announced several upcoming events at the City: Passport Day USA was planned for April 9, the annual Commissioner Recognition event was scheduled on April 9, and the employee service recognition luncheon would be held on April 12.

Councilmember Giordano thanked Mayor Esteves for his work with PG&E, especially behind the scenes, to protect residents in the City. Milpitas Library would host new contest "What the Library Means to Me" with an essay contest for grades 4 – 12, sponsored by the Library Advisory Commission. She referred to resident Dan Manassau who sent e-mail to City Council after the last Council meeting to correct some of the information he wrote about in the newspaper.

Vice Mayor McHugh spoke in view of the fact that Walmart was collecting signatures for an item on the ballot, he requested City staff to research the costs of a special election, and to determine if an election could be held solely by mail, and to provide a report to the Council and public.

Councilmember Gomez thanked staff for the recent redevelopment outreach meetings scheduled, held to educate the public on what the Redevelopment Agency in for the City.

Mayor Esteves congratulated Extron Corporation for opening in Milpitas, moving here from Fremont. The company's CEO termed Milpitas a truly "business friendly City" and was complimentary of employees Albert Zamora, Keyvan Irannejad, Diana Barnhart and Jaime Garcia.

Mayor Esteves also congratulated the Milpitas Historical Society for its new office space. He thanked Library Commissioners Association statewide. He congratulated Cub Scouts Pack for their Blue and Gold Dinner last month. He complimented seniors who reside at Devries House, for their art display of calligraphy and paintings during Chinese New Year, which had been on display at City Hall.

ANNOUNCEMENT OF CONFLICT OF INTEREST

None.

APPROVAL OF AGENDA

Motion: to approve the agenda, as amended

City Manager Tom Williams stated that staff requested removal of agenda Item No. 8.

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

Councilmember Polanski requested to remove Item No. 7 and Mayor Esteves asked to remove Item No. 9 from consent.

Motion/Second: Councilmember Gomez/Councilmember Giordano

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

- *6. Commission Appointments To Recycling & Source Reduction Advisory Commission, appointed Christopher Salian as a regular member and Kashmir Gill as Alternate No. 1 to terms that expire in October 2011. Appointed Madan Arora as Alternate No. 2 to a term that expires in October 2012.

- *10. Ordinance No. 281 Waived the second reading and adopted Ordinance No. 281 to create a Housing Advisory Commission.

- *11. New Home approval Adopted Resolution No. 8068 approving a new hillside home at 814 Calaveras Ridge Drive with conditions.

- *12. New CIP No. 4259 Approved a new Capital Improvement Project, the Escuela Parkway Pedestrian and Bicycle Enhancement, Project No. 4259, and adopted Resolution No. 8069 authorizing the filing of a grant application for this project.

- *13. Agreement with RMC Authorized the City Manager to execute an agreement with RMC Water and Environment in an amount not-to-exceed \$154,468 for engineering support associated with the BART extension, Project No. GT-1063, and various city capital projects.

- *14. Emergency Repair Work for Ayer Pump Station Received a report from Public Works Director on an emergency contract work order for the replacement of variable frequency drives and repair/rebuild of pump motor assemblies for the Ayer Pump Station, Project No. 7102, and approved a budget appropriation.

PUBLIC HEARING

1. Appeal – Club Bahia

Planning Director James Lindsay explained the appeal of the Planning Commission’s approval of changes in operating hours (in the Conditional Use Permit) for the nightclub/restaurant Club Bahia. He reviewed the reasons for the appeal to City Council.

Mayor Esteves invited a representative of Club Bahia to address the City Council for eight minutes. Mr. George emphasized the job loss that would occur if the Council did not overturn the appeal and the club’s manager wanted a chance to improve the situation. The proposal was not to change operating times of long standing. The focus of the facility would change from a nightclub into a restaurant, similar to one operated by the owner in San Jose (Mariscos Bahia). He explained the type license issued by the ABC.

Mr. Lindsay reported that proper process was followed. He took objection to the comment that there was no interaction with the applicant because Planning staff and the Commission followed the precise process, with a much review and a public hearing. The applicant heard staff and the Planning Commissioners’ comments at public meetings.

Councilmember Gomez asked staff about the difference between a restaurant and nightclub, which Mr. Lindsay explained to him. Concerns about police response to the facility were responded to by Milpitas Police Lt. Petrakovitz, indicating there were documented calls from various sources for service at the nightclub.

Mayor Esteves asked the City Attorney to explain options for the Council. Mr. Ogaz said there were two draft resolutions provided for the Council: one to affirm the Planning Commission decision (limiting hours) and the other one to overturn its decision and to allow alcohol sales as had occurred at Club Bahia. A “middle course” with modifications on conditions was also possible.

Councilmember Polanski noted that nightclubs were not permitted in the zoning area where Club Bahia was located. If the state’s ABC determined if a business was or was not a nightclub, then she wanted to know what was the City’s role. Staff commented on the current alcohol permit type granted by the ABC. Councilmember Polanski also inquired why a restaurant in a neighborhood would need six security guards.

Councilmember Giordano asked if the vote by the Planning Commission was six in favor with one opposed, and staff replied yes. Was the staff recommendation still to uphold the decision of the Planning Commission, she asked and staff replied yes.

Vice Mayor McHugh commented on the fact that restaurants were allowed in that zoning

district. If the facility operated as a restaurant, then additional reviews were appropriate. He would like to see Club Bahia succeed as the type of business allowed in that area.

Councilmember Gomez believed within the City limits, a majority of restaurants had a time when they stop serving alcohol, so he asked staff what time that was. The Planning Director replied most stopped serving near 10:00 PM and then closed at 11:00 PM. Councilmember Gomez further referenced videos he viewed on the internet of Club Bahia showing the crowd at the club in the evening.

Mayor Esteves asked if there were any other similar businesses in Milpitas with liquor sales closing at 10:00 PM. Mr. Lindsay replied possibly El Torito restaurant and maybe Dave'n'Busters at Great Mall.

Mr. Michael George spoke to the Council again, stating that the business had an existing CUP, on file for 19 years already. They had a cabaret license for many years. He did not care for the comparison to Dave'n'Busters, which in the past were found to have served alcohol to minors. Club Bahia had a license for dancing at their restaurant, too.

Mayor Esteves asked when was the next review due, per the Planning Commission's conditions of approval. Mr. Lindsay responded the first review was to be in six months.

Vice Mayor McHugh commented that when reviewing a Conditional Use Permit, the key word was "conditional." He believed it was appropriate to institute the recommendation of the Planning Commission and then see how well things go.

Councilmember Polanski said that from photos displayed at this meeting, the club was not a restaurant that has dancing, it was a not place for food, but specifically for dancing and cabaret. Meanwhile, if the owners want to have a restaurant, she did not object to that use.

Mayor Esteves then opened the public hearing.

Public speakers:

Carol Kassab, CEO of Milpitas Chamber of Commerce, saw that renovations were to be made for this restaurant and she wanted to know when. She thought it might take six months for renovations, and then it would be appropriate for the City to review the status of the business in six months' time.

Eduardo Gomez, manager of Club Bahia, thanked Mr. George for speaking to the City Council on the restaurant's behalf. He wanted to have a new review with the Planning Commission, to base the decision on their new plan as presented at this meeting. Club Bahia was in the middle of an expansion to add 2,400 feet to the restaurant space. The sooner the better, as he wanted to continue to do business in Milpitas.

Motion: to close the public hearing after hearing public testimony

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

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

Councilmember Gomez asked staff if there was anything stopping the applicant from returning to the Planning Commission, and staff confirmed there was not.

Motion: to adopt Resolution No. 8067 upholding the Planning Commission's actions (via PC Resolution No. 11-001) to modify the conditions of approval for Club Bahia

Motion/Second: Councilmember Gomez/Councilmember Giordano

Motion carried by a vote of:

AYES: 5

NOES: 0

UNFINISHED BUSINESS

2. Water and Sewer Operating Costs

Utility Engineer Kathleen Phalen provided information to the Council, as follow up information on costs for operating water and sewer services, including comparison to some neighboring cities. She described the March 26 public meeting scheduled as well. The prescribed mailing by the City to property owners was due to go out in early March, approximately March 8 to 10.

Vice Mayor McHugh requested that staff place flyers in the City Hall lobby, at the Sports Center and Senior Center. Staff replied they could do so.

Councilmember Polanski said it would be beneficial to put a full color flyer into the water/sewer bills that go out to all rate payers (not solely the notice going out to property owners). Rate increases are going to affect everyone, whether they are property owner or simply those who pay the bill.

Motion: direct staff to send colorful notice in with the City's water/sewer billing to all customers, and place flyers in three City facilities identified

Motion/second: Vice Mayor McHugh/Councilmember Polanski

Motion carried by a vote of:

AYES: 5

NOES: 0

Ms. Phalen requested clarification from the City Council on what specifically was directed to be mailed. Councilmember Polanski wanted to provide the same information content as was on the Prop. 218 notice and include a little more information on cost breakdown. Vice Mayor McHugh requested the date for the final decision on rates be included, the date protests must be received by, and the community meeting on March 26.

Furthermore, Ms. Phalen explained that the city billing cycle takes place over eight weeks. It would take perhaps 2-3 weeks to develop and print a flyer. Vice Mayor McHugh was not comfortable about that timing, and suggested to have the copies out and available in the public facilities about the public meeting first. Staff also stated that a notice could go out in direct mail for faster service, if desired. Cost information on mailing the Prop. 218 public notice to 18,000 owners was given: the mailing cost \$3,640 (postage only) and the estimated total cost was \$7,502.

Councilmember Giordano felt the best way to notify people was a notice to the rate payers, and lodged her complaint on the time frame vis-à-vis a mailing in utility bills versus the time to comment or protest for the May 3 public hearing.

Mayor Esteves clarified what the Council sought to do to notify property owners, per the state Prop. 218 laws, and separately to notify the City's ratepayers, and described the expected costs for the two mailings.

Councilmember Polanski responded that a simple flyer could be sent as mass mailing at end of this month. She also requested if staff could add another town meeting in mid-April and Ms. Phalen replied yes.

Councilmember Giordano would vote against this because she felt separate mailing was not needed. She asked to send the notice out with water billing already planned, even though it would miss a few customers on time. She did not support two town meetings.

Vice Mayor McHugh noted that this started out as a request to have brochures and information at various public places. If mail was sent to all utility rate payers (versus the

property owners), that obviates the need for the form. There was an obligation asked to notify everyone of dates and rationale for the rate increases. He supported a second town hall as appropriate.

In response to a question from the Mayor, Councilmember Polanski agreed a mail piece should go to utility rate payers, but not to property owners for the second item (remove those who are property owner rate payers). She heard there were three public meetings on redevelopment recently, so two on the rates proposal over a month was do-able.

Motion: have a second mailing, as simple as possible and cost effective, mailed to all utility account holders in Milpitas, mailed at least by end of the month, mentioning an additional town hall meeting in April, with as low cost as possible, to rescind the previous motion and vote (above) and to place material in three public facilities

Motion/Second: Councilmember Polanski/Councilmember Gomez

Mayor Esteves commented and explained his support for the new motion.

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

Councilmember Giordano voted no because she thought the costs were unnecessary and it was a duplication of notification.

Staff Kathleen Phalen went on to provide information for the City Council, emphasizing details on costs for the utilities as requested at the last Council meeting. She gave a timeline of actions regarding the rates.

Council engaged in a discussion on staffing for the utility operations. The Mayor and Councilmembers directed staff to continue to keep costs as low as possible, in terms of operating expenses for materials, and services. The cost of providing the services should not include increased labor expenses, and staff responded that was the assumption included in the cost estimates provided. A benchmarking chart for operating costs prepared by engineering staff was displayed.

Mayor Esteves explained that the reason he was focusing on personnel costs was because that was the one area that the City could control. He wanted to be sure and find that utilities were offered at very competitive rate versus other cities. He spoke of operating efficiently, and to be prudent in operations of the water and sewer service for residents.

Councilmember Gomez wanted to know if other cities operate like Milpitas, not using the general fund for infrastructure, operating as utility funds. Staff assumed so.

Mayor Esteves found the comparative information very helpful and should be included in the mailing going out to rate payers. Next, staff quickly reviewed costs and expenses of the sewer utility.

Councilmember Giordano asked about a possible seniors rate for sewer service, like that offered for the garbage collection. The City Attorney and the Finance Director responded that the City was not allowed by law to charge based on a customer's age.

The scheduled community meeting would be held on Saturday, March 26 at the Barbara Lee Senior Center from 10:00 to 11:30 AM.

Mayor Esteves inquired, on the water expenses chart displayed, how do operations and overhead together (29%) compare to other cities? Ms. Phalen replied that the information provided was based on a snapshot for this year, so she was not certain how to answer this for a different year, so really there was no one answer to his question at this time. The Mayor thanked staff for all the detailed information given at this meeting.

The Mayor asked if anyone from the public wished to speak.

Robert Marini, Milpitas resident, asked why sewer rates were not tiered like the water rates. Costs were fixed rate for sewer and he discussed flow/year. When he compared residential versus commercial customers, he thought rates were unfairly calculated. He was dismayed that notice to property owners would not have a ballot included. He wished to know how many residents were in Milpitas and to know what the cost per resident was.

Ms. Phalen responded first to the question of tiered rates, stating there was far less ability to change sewer costs than water, based on the Master Agreement with San Jose Treatment Plant and the guidelines. Costs were based on flow, not usage per customer like water. The billing was different for residential versus commercial industrial. It was strictly a flat rate for residents, and then a flat rate plus per unit cost for commercial/ industrial customers.

Councilmember Polanski pointed out that the current population figure for the City can be found in the staff report.

Robert Finney, 1410 Yosemite Drive resident, commented on the process in the past two years. No information on improvements on the infrastructure were given. He felt that residents never see anything done on infrastructure. He would like to know where pipes were getting replaced and wanted government to be responsible about their money.

Mayor Esteves asked the City Engineer/Public Works Director to explain infrastructure costs and the City's plan to replace aging equipment, as well as the plan for future needs. Mr. Armendariz commented on the annual Capital Improvement Program, described the pump stations and the backbone of water and sewer systems.

Mayor Esteves commented on the proposed water rate increase, that it was not preferred by the City Council. The main issue was that of wholesale cost increases, and the City cannot absorb that by itself. Logically, costs were passed to consumers. The City could aim to be among the cheapest provider of water service by controlling costs. The Mayor sought to reduce personnel costs since that was within control of City Council. Goal was to deliver water/sewer utility service at the most efficient rates.

Isaac Hughes, Milpitas resident, addressed the Council, beginning with a comment about the need to have appointed members to the Open Government Commission. Mayor Esteves indicated he could not finish comments on that topic and he must address only water and sewer rates at this portion of the meeting.

Motion: to receive a report on Water and Sewer Operating Costs and the community meeting for the Proposed Water and Sewer Rate Increase and noticing as planned, in addition to notifying rate payers (account holders)

Motion/Second: Councilmember Gomez/Vice Mayor McHugh

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

Mayor Esteves announced Council would take a break at 9:41 and returned to reconvene at 9:48 PM.

REPORT OF MAYOR

3. Budget Alternatives

City Manager Tom Williams addressed the topic that the Mayor requested he report back on, following the Council's February 8 study session.

Finance Director Emma Karlen came forward to review Budget Control Alternatives suggested by the City Council at that meeting. She reviewed items numbered 1 to 23, as given in the agenda report materials.

The City Manager was asked to clarify the purpose of the discussion, which was essential to get ready for the future budget study session scheduled on March 15.

Councilmember Gomez viewed this evening as one of a series of opportunities to put items into or remove from the next fiscal year's budget.

Councilmember Polanski was looking at these items, as possibly feasible things to look at, which the City Manager could bring back on March 15 as well as at the April budget hearing. The Mayor agreed with her statement. Also items identified as not feasible should not be discussed.

Councilmember Giordano wanted staff to go through them all if there was consensus. She would like to discuss with representatives of the Milpitas Unified School District at the City/School communication meeting how to continue funding the DARE program, maybe more efficiently or cheaper. On the Chamber subsidy, maybe stepping it down to half the program to reduce the impact.

Councilmember Polanski said there was an ongoing deficit and Council needed to make decisions. Need to bring it back to core service. What was the Chamber subsidy amount for last few years and what did City receive for that, she asked.

Councilmember Gomez concurred with his colleague. He discussed private fundraising for the Literacy program instead of providing funds for it. The Chamber amount was a subsidy, when it started. There was no report back, no performance measurement for the funding and he viewed it as a handout.

Vice Mayor McHugh would be happy to work with Councilmember Gomez to raise funds for the Literacy program. To him, that one and DARE were core services as an investment in children and self-esteem. He could see reducing the Chamber subsidy.

Mayor Esteves disagreed with comments stated about the Chamber of Commerce subsidy. City had to give the Chamber a chance, especially with a new executive there. With a focus on business development, he wanted to support the Chamber.

Regarding the Transient Occupancy Tax, Councilmember Gomez asked if the measure was a general tax for revenue and the City Manager replied yes. Councilmember Gomez asked if the 2% increase from the past could fund DARE and the crossing guards. The City Attorney said yes, since those were general tax funds. The Finance Director clarified how funds were spent from the ballot measure, on the Rainbow Theatre program and for extended library service hours.

Councilmember Giordano remarked, with regard to the County Library Joint Powers Authority, the state would be taking more funds from libraries. She urged caution about moving any money from library funds.

Councilmember Gomez felt a revenue ballot measure, with consideration for other measures beyond only a Transient Occupancy Tax increase, should be considered. Base it on a poll of voters and asked about other possible revenue measure. It would necessitate concessions from employees first, of course.

Mayor Esteves made a statement to City of Milpitas employees. He asked them to come forward to make concessions, even before a negotiation over a Memorandum of Understanding was concluded.

Councilmember Giordano wished to take any consideration for a new tax, particularly an

medical marijuana in cities across the Bay Area. He could offer a “tremendous windfall” for the community with this type of business.

Councilmember Gomez responded to Mr. Riley’s comments, reminding his colleagues he was the one who brought forward the moratorium in this City several years ago. He would ask the City Attorney to report back on this subject. It was time to review and find out the status of what other jurisdictions were doing regarding medical marijuana business.

Carol Kassab, Milpitas Chamber of Commerce CEO, received an education at this meeting and realized she had work to do to let the Council know what the Chamber does in the City. She was working to turn the Chamber around in Milpitas. The Chamber had a lot more going on than maybe realized. She would like the City Council to understand the value of the Chamber with businesses.

Isaac Hughes, Milpitas resident, knows Roberts Rules of Order so it was amazing when allowed while talking about the budget. This was done by people allowed to volunteer, but then the Mayor chose them. He called it spineless to vote on other people’s ideas.

Noting the late hour, just after 11:00 PM, Councilmembers sought to end the meeting, and to continue matters not heard on this date to the next regularly scheduled City Council meeting.

Motion/Second: Councilmember Polanski/Councilmember Giordano

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

- 4. Council Chamber Liaison This matter was not addressed, and would be heard at the next meeting.
- 5. Policy on Commissions This matter was not addressed, and would be heard at the next meeting.

NEW BUSINESS

- 7. Odor Control Report This matter was not addressed, and would be heard at the next meeting.
- 8. Expansion of Ola’s Coffee This item was removed from the agenda.
- 9. Sal Cracolice Building Use This matter was not addressed, and would be heard at the next meeting.

ORDINANCE

One ordinance was adopted on the consent calendar.

RESOLUTIONS

Two resolutions were adopted on the consent calendar.

CONTRACTS

Two items were approved on the consent calendar.

ADJOURNMENT

Mayor Esteves adjourned the City Council meeting at 11:12 PM, in memory of recently deceased former City Manager James Connolly.

The foregoing minutes were approved by the Milpitas City Council as submitted on March 15, 2011.


Mary Lavelle
City Clerk