

**MEETING MINUTES  
CITY OF MILPITAS**

**Minutes of:** Regular Meeting of Milpitas City Council  
**Date:** Tuesday, April 5, 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, Vice Mayor McHugh, Councilmembers Giordano, Gomez and Polanski

**ABSENT:** None.

**CLOSED SESSION**

City Council convened in Closed Session to discuss labor negotiations with all employee groups.

City Council then convened in Open Session at 7:05 PM.

**ANNOUNCEMENT**

City Attorney Mike Ogaz announced that the City Council voted in favor of an agreement with the Milpitas Police Officers Association on a 3 -2 vote (Mayor Esteves and Councilmember Giordano opposed). The side letter agreement included terms of a 7% pay reduction through December 31, 2012, and the MPOA current contract would be extended until that date. Councilmember Giordano voted no because it did not deal with the high pension costs. Mayor Esteves voted no because it involved no real reduction since the reduction was a furlough. He wanted to see at least 10-15% reduction and it was not addressing the pension issue, so he voted strongly no.

**PLEDGE**

One member of Boy Scouts Troop No. 92 led the pledge of allegiance.

**INVOCATION**

Councilmember Gomez introduced Jenny Bales, a ministry leader from Christ Community Church who read a proverb and said a prayer.

**MINUTES**

Motion: to approve City Council meeting minutes of March 7 and 15, 2011 as amended

For the March 15 minutes, Vice Mayor McHugh requested two changes, on page 2 delete one reference in the fourth paragraph, and on page 3 change "cost" to revenue. No changes were requested to the March 7 minutes.

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 Calendar/Schedule of Meetings for April 2011

Motion/Second: Councilmember Gomez/Councilmember Giordano

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

**PRESENTATION**

Mayor Esteves proclaimed (1) April as the *Month of the Young Child* and *National Child Abuse Prevention Month* accepted by the two King sisters, both members of the Milpitas Youth Advisory

Commission, and (2) April 10 -16, 2011 as *National Library Week*, accepted by Milpitas Librarian Linda Arbaugh and Library Advisory Commission Chairman Elpidio Estioko.

## **PUBLIC FORUM**

Kim Ferm, Director of United Way's 2-1-1 Santa Clara County program, updated the City Council on the program's value and resources available, including a report on 572 calls from Milpitas to that phone line. The top requests were for housing and legal assistance. She distributed information packets to each Councilmember, and provided additional brochures to the City Clerk to make available for the public.

Christina Driggers, Milpitas resident, was a supporter of Rainbow Theatre and wished to invite all to attend the "Aladdin Jr." show starting this week. It was so popular that all shows were now sold out. She remarked that it would be a huge loss if the theatre program was cut.

Paul Mullet, President of Milpitas Employees Association, was a 25-year City employee who loved and worked hard for the City. He noted the current challenges to City staff. He highlighted his certifications on the job for his work, and referred to 100 employees present in the audience. It was hurtful that employees were viewed as overpaid. It was not fair what the pay cut was for the other bargaining unit announced earlier. His group sought to come to agreement with the City.

Chris Darker, CEO of United Public Employees of California Local 792, was the union representative for many employees in the City of Milpitas. He spoke of the roles of public employees and sought support for City employees.

Martha Lambdin, a longtime Milpitas resident, worked for a county contract agency and knew what it was like to get laid off. However, the Rainbow Theatre should not get cut from the budget because it was very important for the kids to continue.

Robin Hays, Arts Commissioner, was concerned about the City losing any funds to the state. She noted that the Council had some money allocated for art that was not yet spent. She was eager to know if the funds were safe. Mayor Esteves responded to her briefly.

Councilmember Gomez commented to her that the Public Art Committee should not go on any spending spree or any different course of action, until the budget was considered.

Eddie Laredo, Milpitas employee representing the Milpitas Supervisors Association, read aloud additional comments in writing from Mr. Darker about public employees.

Kelly Tam, Milpitas resident, emphasized the importance of the Rainbow Theatre and its value especially for families. She felt it was as important as the public library.

A woman came to the podium and asked her daughter to speak. The young girl was a member of Rainbow Theatre and said how much she loved participating in Rainbow Theatre.

Robert Marini, Milpitas resident, addressed the Council on proposed sewer rates, reminding all that there was another public meeting the following day at the Senior Center. He discussed questions raised at the last public meeting on Saturday, stating costs were not distributed equally.

Preeti Surti was an 18 year Milpitas resident and parent of two sons who participated in Rainbow Theatre. She talked about creativity of the kids and leadership skills developed at the theatre, a key program for growth. She urged Council not to do away with Rainbow Theatre.

Garry Long, a Milpitas resident, had phoned all City Councilmembers and requested a phone call back, but received none. He came to address the sewer rates, saying those were not calculated correctly. He discussed amenities of new multi-family units built since 2000.

Mayor Esteves responded to him to please call the City staff to seek answers to his questions.

Dan Manassau, a Milpitas resident, had sent email a few weeks ago asking for some detailed information on water and sewer rates. He received the water information but had not yet received

any information about sewer. City Manager Tom Williams responded that he would talk to Mr. Manassau to find out information specifically the resident still needed.

Councilmember Gomez said that he would treat any requests for public information the same. He did not want any special reports or analysis created to answer only one person. The City Manager responded further about available staff resources.

## **ANNOUNCEMENTS**

Councilmember Polanski announced that the Emergency Preparedness Commission along with the City and the Milpitas Unified School District and volunteers would hold a simulated disaster drill at Randall Elementary School the next day, for the 17<sup>th</sup> year. She acknowledged two members of the MUSD Board of Trustees in the audience, Dan Bobay and Marsha Grilli.

Vice Mayor McHugh thanked the Mayor for proclaiming Tartan Day. The Vice Mayor had presented the proclamation at a recent county celebration. He also requested the Council adjourn this evening's meeting in memory of Father John Asimacopoulos from St. Nicholas Orthodox Church in San Jose.

Councilmember Giordano commented that with regard to the United Way's 2-1-1 service, she requested a report from staff about where 2-1-1 information could be disseminated throughout the City. Also, she had not heard any more on solar lighted soccer fields and asked for an update on that topic.

Mayor Esteves congratulated the Police Department for recent arrests of 4 or 5 suspects for prowling, burglarizing and kidnapping. He said thank you to the officers. Recently, he'd asked non-profit groups and churches for volunteers to help the City. He thanked the first few groups that had responded recently: Silicon Valley Alliance Church, Korean New Vision Church, Lions Clubs, BAPS, S. Orion Temple and Mt. Olive Lutheran Church.

Mayor Esteves thanked the Milpitas Friends of the Library for support. He congratulated recent Curtner School DARE graduates. He congratulated three Eagle Scouts in the community.

## **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: 5  
NOES: 0

## **CONSENT CALENDAR**

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

Councilmember Gomez asked to remove Item No. 11 from consent. Councilmember Polanski asked if Items No. 1 and No. 4 could go onto consent, and Councilmember Giordano objected on No. 1. Mayor Esteves accepted placing No. 4 on consent and commented that the funding donations requested were for lower dollar amounts than in the past.

Mayor Esteves asked a question on Item No. 13 regarding the fair market value of one acre of land: was it a static value of land? Planning Director James Lindsay replied yes, and this subject came to the City Council once each year.

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

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

\*4. Two Requests for Donations to School Groups Approved two donations of \$500 each in support of the Milpitas High School Robotics Club and Casino Night fundraiser for the Rancho Middle School held on April 1, 2011.

- \* 5. Commission Appointments      Approved the following appointments:
- Community Advisory Commission: appointed Janice Bobay as Alternate No. 3 to a term that expires in January 2012.
- Economic Development Commission: re-appointed Ricardo Ablaza to a term that expires in April 2014 and Alternate No. 1 Chandru Bhambhra to a term that expires in April 2013.
- Parks, Recreation and Cultural Resources Commission: appointed Mikaela Garcia as Alternate No. 2 to a term that expires in June 2013.
- \* 7. Library Donations                      Accepted Milpitas Public Library donations totaling \$3500 and approved spending plans.
- \* 8. PRCRC Workplan                      Approved the Parks, Recreation and Cultural Resources Commission 2011 Work Plan.
- \* 9. Report on Emergency Work on Ayer Pump Station      Received the progress report from the Public Works Director on the emergency contract work order for the variable frequency drives/pump motor assemblies for the Ayer Pump Station, Project No. 7102.
- \*10. Budget Transfers to CIPs              Approved budget transfers totaling \$1,093,661 in FY 2009 and 2010 to seven Capital Improvement Projects.
- \*13. Resolution for Fair Market Value of One Acre              Adopted Resolution No. 8078 establishing the 2011 fair market value of an acre of land to be \$2,047,320 for the purpose of calculating park in-lieu fees.
- \*14. Resolution for Pyro Spectaculars for July 4<sup>th</sup>              Adopted Resolution No. 8079 authorizing the City Manager to execute a contract with Pyro Spectaculars for the not-to-exceed amount of \$21,600 for the annual 4<sup>th</sup> of July fireworks display in the City of Milpitas.
- \*15. Resolution for Purchase of Firefighting Equipment              Adopted Resolution No. 8080 authorizing the purchase of \$55,670 worth of firefighter wildland personal protective equipment/clothing through the use of cooperative procurement contracts.
- \*16. Agreement with Harris & Associates                      Approved a budget appropriation of \$85,000 from the Street Fund into the Escuela Parkway Pedestrian and Bicycle Enhancements, Project No. 4259.  
Approved and authorized the City Manager to execute an agreement with Harris & Associates, in the amount of \$60,000, Project No. 4259, subject to approval as to form by the City Attorney.
- \*17. Agreements with County for AB939 fees              Authorized the City Manager to execute FY 2011-12 agreements with the County of Santa Clara for collection of AB 939 implementation fees and administration of the Countywide Household Hazardous Waste Collection Program.
- \*18. Agreement with Dr. Howard Michaels              Authorized the City Manager to execute an agreement for Professional Services with Dr. Howard E. Michaels, M. D. to provide Medical Director Services to the Milpitas Fire Department for the not-to-exceed amount of \$45,000.

**UNFINISHED BUSINESS**

1. March Odor Report                      Utility Engineer Kathleen Phalen updated the City Council addressing topics such as hours the BAAQMD hotline was staffed live, recent City of San Jose activities, and public outreach. She pointed out that the odor control hotline number 1-800-334-6367 was addressed on the City's utility invoices, as requested.
- Mayor Esteves inquired about the City of San Jose's 15-year time frame for remediation of odors.

Vice Mayor McHugh asked when the City's complaint center (hotline) for enforcement of compost and other odors would get started, and City Manager Williams responded within 30 days.

Finally, Mayor Esteves asked staff for a report of what benefits the City received from residents calling the existing hotline for the last 7 or 8 years.

Motion: to receive the March 2011 odor report from Engineering staff

Motion/Second: Councilmember Gomez/Councilmember Giordano

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

## 2. Use of City Rental Facilities

Parks and Recreation Director Bonnie Greiner began her report and the Mayor asked questions, wanting to know about facilities reservations over the weekends and if those produced revenue, which staff confirmed.

Councilmember Giordano recalled at Finance Subcommittee in the past, rates were reviewed. She asked if rates were revenue generating after costs were considered, and that any change in rates should be for cost recovery 100%.

Mayor Esteves urged maximum use of all City facilities. He suggested a look at rates, to be lower on weekdays and higher on weekends. Staff commented about park rentals – they would have to adjust rates if parks were rented for more than one use per day.

City facilities were rented at multiple times per day. Ms. Greiner discussed use of City Hall rooms and the Police Department Community Room.

Regarding the Sal Cracolice facility on Abel St., staff suggested to return to City Council in one year to re-evaluate its use. The site has been very busy recently.

Mayor Esteves commented that City meeting room facilities should be at par or cost compared to private rental halls. He wanted a projection of usage of facilities to know how facilities were doing without a lot of vacancy and an action plan. He asked when would staff return with that and Ms. Greiner replied the first meeting in May.

Councilmember Polanski made one suggestion, that the Finance Subcommittee should review the fees, with information from staff to look at cost recovery, before this matter returned to City Council. On the Sal Cracolice building, she agreed with staff recommendation and wanted that communicated to the public who came to meetings in the past, especially the neighbors.

Motion: to receive the report from staff and directed staff – with regard to facility rentals – to bring the fee structure to the Finance Subcommittee, that notification be sent to the KB Home neighborhood about the ongoing rental use of the Sal Cracolice facility, to return to Council in one year, and to provide a report on projected utilization of facilities as requested by the Mayor

Motion/Second: Councilmember Polanski/Councilmember Giordano

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

## **JOINT REDEVELOPMENT AGENCY, PUBLIC FINANCING AUTHORITY & CITY COUNCIL MEETING**

### **RA 1. CALL TO ORDER**

Mayor/Agency Chair Esteves called to order the regular meeting of the Milpitas Redevelopment Agency meeting jointly with the City Council at 8:36 PM.

**ROLL CALL**

**PRESENT:** Chair/Mayor Esteves, Vice Chair/Vice Mayor McHugh, Agency/Councilmembers Giordano, Gomez and Polanski

**ABSENT:** None

**RA 2. MINUTES**

Motion: to approve the Agency meeting minutes of March 15, 2011

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

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

**RA 3. Agenda Approval and Consent Calendar**

Motion: to approve the agenda/consent calendar

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

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

**\*RA4. Agreement with HMH Inc. for plan line study**

Approved and authorized the Agency Executive Director to execute an agreement with HMH Incorporated in the not-to-exceed amount of \$110,000, Project No. 4179 subject to approval as to form by the Agency Counsel.

**RA 5. ADJOURNMENT**

Chair/Mayor Esteves adjourned the Redevelopment Agency meeting at 8:36 PM.

**JOINT ECONOMIC DEVELOPMENT CORPORATION AND CITY COUNCIL MEETING**

**EDC1. CALL TO ORDER**

Mayor Esteves called to order the regular meeting of the Economic Development Corporation meeting jointly with City Council at 8:36 PM.

**ROLL CALL**

**PRESENT:** Chair/Mayor Esteves, Vice Chair/Vice Mayor McHugh, Directors/Councilmembers Giordano, Gomez and Polanski

**ABSENT:** None

**EDC2. Agenda Approval and Consent Calendar**

Motion: to approve the agenda and consent calendar, as amended

Vice Mayor McHugh asked to remove Item No. EDC 3.

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

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

**EDC3. New CIP for Audio Visual Equipment**

Vice Mayor McHugh expected more detail for such a large expenditure requested here. Therefore, he would like a detailed list of the items to be purchased that total \$1.5 million. Mayor Esteves agreed with him.

City Manager Williams said staff would provide a breakdown by memo. He explained that the expenses were part of Redevelopment Agency fund, and with the worry of loss via the state budget, staff chose to bring this item forward now.

Engineer Steve Erickson agreed to provide the information requested.

Councilmember Polanski commented about City Hall equipment, stating that the Telecommunications Commission reviewed this request and related issues.

Motion/Second: Director/Councilmember Polanski / Director/Councilmember Gomez



Mayor Esteves responded that the concept of internal auditor came up in his discussions, but it would cost more money, so the idea of a volunteer Commission was best at this time. Maybe later the City Council would hire that post.

Vice Mayor McHugh made a statement about the role of Councilmembers pointing out that they were elected to do this work.

Councilmember Gomez discussed the City of San Jose which had an internal auditor, and that office did management audits very effectively, where almost \$30 million in savings was realized for the neighboring City.

Vice Mayor McHugh responded about the Santa Clara County internal auditor, who was also very effective at finding savings to serve the citizens well. This post provided greater feedback and savings to the local government.

City Manager Williams responded he would be available to work with any outside group that Council directed.

Mayor Esteves felt that even with an internal auditor, they still needed to have citizen input on the budget and other issues. The volunteer Commissioners could thus reduce staff's time on helping the Commission.

Next, the Mayor invited input from those in the audience.

Robert Marini, Milpitas resident, rebutted comments about Councilmembers acting in the best interests of the citizens.

Vice Mayor McHugh responded to Mr. Marini, and noted City Councilmembers were also residents of the City and would have to pay all increased utility charges.

Steve Bunnell, Seacrest Drive resident, said his wife was an internal auditor for the City of Sunnyvale and recommended that role for Milpitas. He complimented Vice Mayor McHugh for his outstanding suggestion for a performance auditor, especially for direct reporting to the elected officials.

Dan Manassau, Milpitas resident, was happy they were discussing a City auditor, which he urged to be full time. He had experience in this area and it was not "internal affairs" so he did not agree with a comment made earlier.

Mayor Esteves asked the Finance Director to comment on the difference between internal and external auditor, and Ms. Karlen did so stating an external auditor would validate all financial systems.

Joseph Weinstein, Milpitas resident, thanked the Mayor for inviting Task Force members to meet with him. He wondered what the purpose was of many City Commissions. He was weary of citizens who did not understand the system of government, and the fact that elected officials needed to go out and raise money to be elected to City Council. Fund-raising was necessary for the job and he did not want their ethics questioned.

Mayor Esteves felt the need was for internal audit. The City had never had a true check-and-balance and so an effective internal auditor could save money ultimately. A Commission would invite more citizen participation. He would support a full time internal city auditor.

Motion: refer to staff the issue of an analysis of the possible new Commission and the idea of hiring an internal auditor, requesting staff to come back to Council in one month

Motion/Second: Vice Mayor McHugh / Councilmember Gomez





Councilmember Giordano would like to support the City Manager in creating a more productive workforce for the City. Seniority was at least objective, she commented, and the process could turn subjective if this change went forward and fairness mattered a lot. She felt the City wanted to avoid grievances and lawsuits down the road.

Vice Mayor McHugh was concerned with the meet-and-confer issue. He twice asked the City Attorney to re-affirm that the Council was protected by actions taken to date, and the Attorney did so.

Councilmember Polanski asked the City Manager what other cities did. Human Resources Director Carmen Valdez came to the podium to state seven years on a reinstatement list was the highest amount. Ms. Valdez commented that anywhere from one to three years at other cities was the number for those that keep re-employment lists. Councilmember Polanski further stressed the importance and value of employee performance evaluations, as done properly. She talked about the layoff process at her place of employment and hoped there would be no layoffs in Milpitas.

Mayor Esteves agreed with the City Manager, upon bringing this subject forward. He was not too concerned about the performance rating methods, because department directors don't deserve to be directors if they don't know how to do performance evaluations. There should be ratings for all employees. He emphasized the Council wanted the best from all employees, as the best resources for the City. The change proposed would allow for flexibility, he stated.

Next, Mayor Esteves invited speakers from the audience.

Agatha "Lollie" Williams, a 33 year employee in the Engineering office and a resident, requested withdrawal of the ordinance. She was protesting if passed, since it would create unequal or unfair situations if there were layoffs. Employees were not the cause of current financial difficulties of the City.

Gerardo Amador, a 10 year City employee and San Jose resident, said there were other issues to take a look at. He had worked in three different departments and three divisions, as a plan checker. So he'd changed every 2.5 years and was re-assigned. He was not on the bottom for seniority of building inspectors.

Cindy Winters, a 31 year resident and 12 year employee, reported that employees "work their fannies off for you." Seniority protected employees from discrimination by management. Employee loyalty was meaningless if this proposal was adopted.

Chris Darker, the UPEC union representative, submitted a letter already to the City previously on this issue. He stated the matter was not properly before the City Council, and said the City had not met and conferred, as required. The City ordinance and the group's Memorandums of Understanding language were connected. His point of view was that they must change MOU first and then adopt an ordinance. He contended on meaning of meet-and-confer on this topic. UPEC had very serious concerns on this language, the need to meet-and-confer and he would file an Unfair Labor Practice charge with PERB, if Council proceeded.

Steve Bunnell, a 35 year resident and 22 year employee, referred to the past layoff situation. He felt there was a targeted position and one employee was forced to retire and that irritated him.

Councilmember Gomez asked the City Attorney about obligations. Mr. Ogaz was confident that the City had met-and-conferred with unions on this topic, and had not heard back that further meeting was needed. Mr. Gomez asked if there could be another meeting to receive comments and bring this back to Council, in order to change the ordinance language? The City Manager replied yes.

Vice Mayor McHugh was not comfortable with this issue. He wanted to rely on what he was told on the meet-and-confer requirement. He sought to avoid an Unfair Labor Practice charge. Mr. Ogaz responded that his office was always prudent with regard to requirements, and that more meetings could certainly occur, to allow for the Council to move forward and to protect the City better.

Mayor Esteves firmly believed, regarding the substance of the agenda item, it would be most beneficial for people of the City of Milpitas. Businesses do not use seniority for layoffs. He was firm on the performance rating system as the best way for employee reduction, and it should be applied as soon as possible. But, it must be done properly, with the right process and legally compliant.

City Manager Williams commented about meeting with Mr. Darker to continue the meet-and-confer process.

Motion: to direct the City Manager to review the draft ordinance, have further meet-and-confer meetings with the union representative, to include consideration of performance measures at time of layoffs, and to return to the Council at the next meeting

Motion/Second: Vice Mayor McHugh/Councilmember Gomez

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

**RESOLUTIONS**

Three resolutions were adopted on the consent calendar.

**CONTRACTS**

Three items were approved on the consent calendar.

**ADJOURNMENT**

Mayor Esteves adjourned the City Council meeting at 10:46 PM, in memory of Father John Asimacopoulos of St. Nicholas Orthodox Church.

**The foregoing minutes were approved by the Milpitas City Council as submitted on April 19, 2011.**

  
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Mary Lavelle  
City Clerk