

**MEETING MINUTES  
CITY OF MILPITAS**

**Minutes of:** Regular Meeting of Milpitas City Council  
**Date:** Tuesday, May 3, 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 and Polanski

**ABSENT:** Councilmember Gomez was absent at roll call and arrived in closed session.

**CLOSED SESSION**

City Council convened in Closed Session to discuss labor negotiations.

City Council then convened in Open Session at 7:03 PM.

**ANNOUNCEMENT**

City Attorney Mike Ogaz announced agreements reached on several labor contracts. For the firefighters (IAFF) Local 1699, Council agreed on a side letter including 7% additional payment by employees of the employer portion to PERS, eliminate a 3% pay raise due in 2012, a 3% at age 55 retirement formula for new hires, and to reduce vacancies from 12 to 6. For the new Memorandum of Understanding with Milpitas Employees Association, covering the period from January 1, 2011 to December 31, 2012, concessions equal to 10% of employees' salary and benefits, a new 2% at age 60 retirement formula for new hires, and no layoffs or outsourcing unless certain provisions were met. For the Milpitas Supervisors Association, an agreement through December 31, 2012, eliminate 6% longevity pay and after that employees cut salary for a total concession equal to 10% of total compensation, eliminate City deferred compensation contribution, a new 2% at age 60 retirement formula for new hires, and no layoffs or outsourcing unless certain provisions were met. Both MEA and MSA agreed to discuss a cafeteria style benefits plan. The votes on the employee agreements were as follows: for IAFF: 5-0 unanimous; for MEA: 4 in favor – 1 opposed (Jose Esteves) and MSA: 4 in favor - 1 opposed (Jose Esteves).

**PLEDGE**

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

**INVOCATION**

Mayor Esteves invited Pastor Debra Whitlock Lax to give a brief prayer to start the meeting.

**MINUTES**

Motion: to approve City Council meeting minutes of April 19, 2011, as amended

Vice Mayor McHugh requested the correct spelling of Ms. Sundas' name on page 7.

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 May, as amended

Vice Mayor McHugh pointed out the scheduled May 4 joint communication meeting of Councilmembers and School Board members was canceled.

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

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

**PRESENTATIONS**

Mayor Esteves proclaimed *Building and Safety Month* for May – accepted by Milpitas Building staff, and also proclaimed *Wildfire Awareness Week* for the week of May 1–7, 2011 – accepted by City of Milpitas and Spring Valley Fire Departments’ firefighters.

**PUBLIC FORUM**

Steve Balsbaugh, Seacliff Drive resident and grandparent, spoke in support of parents and grandparents wanting to work with the City to support continuing Milpitas Tidal Waves program.

Robert Marini, Milpitas resident, tried to address City Council on matters related to utility rates and the budget. His comments related to Item No. 1, so the Mayor asked him to sit down until the public hearing on that matter. He discussed the limited speaking time at the last meeting.

Isaac Hughes, Milpitas resident, read a letter he submitted to the City Clerk office, requesting a document and made comments about the provision of public records at City Hall.

Kana Manix, represented an electronics company who had applied for a business license last week, at 720 Montague Expressway. His comments related to Item No. 2, so the Mayor asked him to sit down until the public hearing on that matter.

A woman wanted to submit letters to the City Clerk in support of Rainbow Theatre. She responded to the Mayor about proposed cost reductions and fundraising by the group.

Rob Means, 1421 Yellowstone, spoke on global warming and climate change.

**ANNOUNCEMENTS**

Councilmember Giordano complimented the Information Systems Department since the City website was recently honored by *juggle.com* for innovative web technology for e-government services. She complimented Fire Chief Sturdivant for his selection to attend the Harvard Kennedy School of Government in July at Cambridge, MA. She made further comments in response to Dan Manassau and an article in San Jose Mercury News. Also, she displayed her monthly calendar overhead indicating the number of meetings attended.

Mayor Esteves commented on a recent news article where an incorrect comment was printed, about release of perks and benefits, including medical costs for elected officials.

Vice Mayor McHugh requested to adjourn the meeting in memory of Mr. Cecilio Reyes, an active member of the St. John’s community.

Councilmember Polanski requested to obtain a copy of an adopted Council resolution, on benefits for the City Council. She wanted information on when or if Councilmembers got medical for life.

Mayor Esteves was grateful to the Police Department for its work over the last two weeks, for arresting various criminals and keeping the City safe. He thanked Korean New Vision Church for its recent walk-a-thon to raise money for various non-profits. Black April Day was celebrated by local Vietnamese residents. Also, 10 new Eagle Scouts in the community were applauded.

Mayor Esteves referred to a letter he had received from the County’s Local Agency Formation Commission (LAFCO) regarding one parcel of unincorporated land in Milpitas. He asked to place onto the next Council agenda this topic for considering annexing the property into the City of Milpitas boundary, which was recommended by Santa Clara County Cities Association.

**ANNOUNCEMENT OF CONFLICT OF INTEREST**

None.

**APPROVAL OF AGENDA**

Motion: to approve the agenda as submitted

Motion/Second: Councilmember Gomez/Councilmember Polanski

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

## CONSENT CALENDAR

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

Mayor Esteves asked to remove Item No. 10 from consent.

Motion/Second: Councilmember Polanski/Councilmember Giordano

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

- \* 4. Odor Report Received the April 2011 odor report.
- \* 5. Progress Report on Pump Station Repairs Received the Public Works Director's progress report on emergency contract work order for the Variable Frequency Drives/Pump Motor Assemblies for the Ayer Pump Station, Project No. 7102.
- \* 6. EDC Work Plan Approved the 2011 Economic Development Commission Work Plan.
- \* 8. Resolution LLMD 98-1 Adopted Resolution No. 8083 directing the preparation of the Annual Engineer's Report for LLMD No. 98-1 Sinclair Horizon.
- \* 9. Resolution LLMD 95-1 Adopted Resolution No. 8084 directing the preparation of the Annual Engineer's Report for LLMD No. 95-1 McCarthy Ranch.
- \* 11. Increase Charges for vendor Ricoh Americas Authorized the City Manager to increase the annual lease and maintenance charges with Ricoh Americas Corp. for printers and copiers to the not-to-exceed amount of \$55,000.
- \* 12. Amendment No. 1 to Agreement with All Points Approved Amendment No. 1 to the Non-Exclusive Collection, Transportation, and Recycling of Debris Agreement with All Points Roll-Off, Inc.

## PUBLIC HEARINGS

### 1. Adopt Analysis of Impediments Report

Principal Planner Felix Reliford explained the housing Analysis of Impediments report, and that it was required to be sent to the federal HUD following the public hearing.

Councilmember Giordano asked about minority language information. That was highlighted in the report to conduct outreach in other languages, and she asked staff what the plan was. Mr. Reliford replied he would study which languages were needed and then print brochures and other outreach material about housing opportunities in the appropriate languages for Milpitas residents.

Vice Mayor McHugh asked about secondary dwellings units in some residences. He inquired how many there were in the City. Staff could find out and get back to the Council with that number. He asked about rules for such units, and confirmed that no Conditional Use Permit was required in Milpitas.

Mayor Esteves asked how staff helped people who speak other languages, and Mr. Reliford explained there were City staff that speak minority languages and translate.

Next, the Mayor opened the public hearing and there were no comments.

(1) Motion: to move to close the public hearing

Motion/Second: Councilmember Gomez/Councilmember Giordano

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

(2) Motion: to adopt the Analysis of Impediments to Fair Housing Choice Report

Motion/Second: Councilmember Gomez/Councilmember Giordano

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

2. Ordinance No. 38.793 for nonconforming buildings

Planning Director James Lindsay explained nonconforming use regulations, and its purpose to promote the eventual conversion of existing uses to current standards. The Planning Commission may allow more restrictive nonconforming uses through a Conditional Use Permit. The proposed ordinance was to apply only to the Midtown Area.

Councilmember Giordano asked what the current requirement for noticing changes was. Mr. Lindsay replied within 1,000 feet. So, she asked why noticing for the new ordinance was only 500 feet? Staff believed that range was appropriate for application from a non-conforming use applicant. Councilmember Giordano asked to match this new ordinance requirement for noticing to 1,000 feet.

Mayor Esteves asked if the ordinance was not for a new establishment, rather it was for something that's already established and staff confirmed. So, that meant more expense to notice in that farther area range, as Councilmember Giordano requested.

Vice Mayor McHugh remembered the issue of the Milpitas Food Pantry relocation, and thus felt that wider notification was always in the interest of residents, so he supported wider noticing.

Mayor Esteves next opened the public hearing.

Vince Wallace, Paseo Padre Parkway, Fremont resident, represented a Sinnott Lane business that was primarily auto repair workshops in a multi-tenant facility. He recently had one tenant that was a charity organization, and then went to replace space with an auto business again but had to go back and get a CUP. So, he supported the ordinance and the changes in it.

Kana Manix, a business owner, felt there would be no flexibility at 720 Montague Expressway, as he recently applied for a business license. He talked about frustration with use at that facility. He would like some changes in the recommended ordinance language.

Mr. Lindsay responded that the Transit Area Plan, where Mr. Manix' property was located, was not included in the new proposed ordinance.

Vice Mayor McHugh stated his concern similar to Councilmember Gomez, it seemed in the current economic times, that it would be beneficial to include the Transit Area as well as Midtown in the regulations in the proposed ordinance.

Mayor Esteves had one comment related to the Planning Commission – it approved Conditional Use Permits and could put conditions on any applicant.

Councilmember Polanski agreed with the last two speakers and to include Transit Area.

Rob Means, Milpitas resident, spoke about the purpose of nonconforming use, nudging property owners toward existing uses in the Code. More flexibility was a good idea.

(1) Motion: to close the public hearing following public testimony

Motion/Second: Councilmember Gomez/Vice Mayor McHugh

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

Vice Mayor McHugh noted the Council needed a reading of the title first, and then he wanted to include amendments to 1) include the Transit Area, and 2) change notification to neighboring properties to 1,000 feet.

City Attorney Ogaz read aloud the title of Ordinance No. 38.793, “An Ordinance of the City Council of the City of Milpitas, California, Amending Title XI, Chapter 10, Sections 2 and 56 of the Milpitas Zoning Ordinance to Incorporate Additional Definitions and Provisions Related to Non-conforming Uses.”

(2) Motion: to waive the first reading beyond the title of Ordinance No. 38.793

Motion/Second: Vice Mayor McHugh/Councilmember Gomez

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

(3) Motion: to introduce Ordinance No. 38.793 to amend the Zoning code, including two changes - to include the Transit Area and to change notification to neighboring properties to 1,000 feet

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

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

### 3. Water and Sewer Rate Ordinances

City Engineer Greg Armendariz introduced the topic of the utility rates and showed a short video regarding water supply and work planned on 19 miles of water pipeline from Hetch Hetchy water source. He highlighted the extensive public outreach and education over the past several months on the services provided by the City to residents of Milpitas.

Mr. Armendariz discussed the three main drivers to rate increases: 1) two providers’, SFPUC and SCVWD, costs were way up with large increases due this year and the next few years; 2) the sewer treatment system and need to participate in upgrades to the Water Pollution Control Plant in San Jose via the Master Plan update on infrastructure; and, 3) City systems for water and sewer need seismic upgrade work. He went into some detail on the utility water and sewer systems.

Engineer Kathleen Phalen addressed the City Council about the specific rate increases proposed by the two ordinances. There would be four tiers for water rates for customers in the new rate structure. She detailed the public outreach including three valuable community meetings held.

Councilmembers asked a variety of questions relative to the rate increases proposed, and staff responded.

Mayor Esteves clarified that the money collected would go directly to the two enterprise funds specifically and staff confirmed this.

Next, Mayor Esteves opened the public hearing to receive public comment on the proposed utility rate increases. He allowed staff to respond to the speakers.

Robert Marini, Milpitas resident, displayed information relative to sewer rates specific to Milpitas, not specific to City of San Jose as he felt Kathleen Phalen had done. Seniors were thus paying too much for sewer service, he believed. On the notice sent to the public, the amount of fees to be charged (its basis) should be stated.

Ray Nario, Milpitas resident, appreciated the City staff work done on this proposal. Yet, large increases were proposed and he saw no end in sight. He wanted sustained 30–40 year lower rates at the end of all this work.

Rob Means, 1421 Yellowstone, stated the water upgrade was for something residents used every day, and the cost was less than bringing BART to Milpitas. He referred to more water efficient landscaping instead of green grass, and suggested a higher increase for the highest tier water users. Conservation was the best way to keep bills low.

Garry Long, a resident since 1967, spoke of sewer rate injustices. He had a problem with calculations based on the number of persons/unit, with the newest multi-family dwellings in the City. He was not against the water rate increases proposed.

Gary Tang, 1314 Carobwood resident, questioned the rate structure and how it was calculated. He further questioned data used by staff.

(1) Motion: to close the public hearing, following the speakers

Motion/Second: Councilmember Polanski/Councilmember Gomez

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

Councilmember Polanski said she was not thrilled to raise rates, but the infrastructure work on the utilities was essential. She asked staff to look at multi-family units as the City grew in the future. She had calculated a rate per day she paid for water and determined it was a very good value.

Mayor Esteves agreed with the gentlemen at the meeting about lack of a great incentive for water conservation with the rate plan. Something more should be done in the future to encourage more conserving of water use by residents.

(2) The next action was to receive a summary from the City Clerk of the number of protests received. City Clerk Lavelle reported 523 protest letters received as of 5:00 PM on this date. The Council voted unanimously to receive the reported number from the City Clerk.

The City Attorney confirmed that since the quantity was far less (only 3%) than 8,572 property owners required to sustain a protest vote, the Council could proceed with the following actions.

City Attorney Ogaz read aloud the title of Ordinance 120.46.

(3) Motion: to waive the second reading of Ordinance No. 120.46

Motion/Second: Councilmember Giordano/Councilmember Polanski

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

(4) Motion: to adopt Ordinance No. 120.46 amending Chapter 1 of Title VIII of the Milpitas Municipal Code relating to water charges

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

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

City Attorney Ogaz read aloud the title of Ordinance No. 208.47.

(5) Motion: to waive the second reading of Ordinance No. 208.47

Motion/Second: Councilmember Giordano/Councilmember Polanski

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

(6) Motion: to adopt Ordinance No. 208.47 amending Chapter 2 of Title VIII of the Milpitas Municipal Code relating to sewer charges

Motion/Second: Councilmember Polanski/Vice Mayor McHugh

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

**UNFINISHED BUSINESS** Two items were approved on the consent calendar.

**JOINT REDEVELOPMENT AGENCY AND 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 City Council at 9:27 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 April 19, 2011

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

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

**RA4. Financial Status Report** Finance Director Emma Karlen provided the nine months' overview of the City's financial status, comparing revenues and expenditures versus the adopted FY 2010-11 city and agency budget. She highlighted the few areas where revenues had increased more than expected and lower revenues, such as property taxes due to lower assessments. She reviewed the Redevelopment fund balance also.

The Mayor and Vice Mayor asked her several questions on the audit process, and requested to ask the City's auditor to come before the City Council in the future.

Councilmember Giordano asked about the required minimum for reserve funds. Ms. Karlen explained the Council's fiscal policy to have 15% set aside in the General Fund (not specified in the Redevelopment Agency).

Vice Mayor McHugh moved, and Councilmember Gomez seconded, to require the City's auditor to meet in Closed Session with City Council at the same meeting as when the City Council reviews the final audit. Councilmember Polanski did not agree with a need for this. Vice Mayor McHugh said it was primarily to ask questions about areas of potential improvement as mentioned in the report. It was a practice he experienced at the County. Later, he withdrew the motion.

Mayor Esteves agreed the auditor should present the next report to the City Council in Open Session the next time it was scheduled.

Councilmember Polanski moved, and Vice Mayor McHugh seconded, that the City's annual audit when done must be presented by the Auditor to City Council in the open part of the meeting and it was approved unanimously.

On a related issue, Vice Mayor McHugh asked the City Manager when the Council would get a report back on the concept of a possible internal auditor and/or the new Commission proposed by the Mayor. Mr. Williams responded, in the next one to two months.

Motion: to receive financial status report for the nine months ended March 31, 2011

Motion/Second: Councilmember Giordano/Councilmember Polanski

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

- \*RA5. Investment Report Received the investment portfolio status report for the quarter ended March 31, 2011.
- \*RA6. Resolution for Affordable Housing Adopted Resolution No. RA415 / 8082 authorizing the purchase of two low-income units and releasing the Resale Restriction Agreement for one moderate-income unit identified in the resolution.
- \*RA7. Change Order for Project No. 2001 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.
- \*RA8. Bids for Project 8162 Approved plans and specifications for Project No. 8162 for N. Main St. parking lot resurfacing and authorize advertisement for bid proposals.
- \*RA9. Work Order for Senior Center project Approved and authorized the Agency Director to execute a work order contract with Swenson & Associates for an amount not to exceed \$16,500.00.

**RA 10. ADJOURNMENT** Chair/Mayor Esteves adjourned the Redevelopment Agency meeting at 9:45 PM.

### **ECONOMIC DEVELOPMENT CORPORATION**

- EDC1.** Call to Order/Roll Call Chair/Mayor Esteves called to order the regular meeting of the Milpitas Economic Development Corporation meeting jointly with City Council at 9:45 PM and all members were present.
- EDC2.** Agenda and Consent Calendar Approval Motion: to approve the agenda and consent calendar, as submitted  
Motion/Second: Board/Councilmember Polanski / Board/Councilmember Giordano  
Motion carried by a vote of: AYES: 5  
NOES: 0
- \*EDC3. Budget Adjustment Approved a budget adjustment of \$7,700 to cover the cost of due diligence for the purchase of 1432-1440 South Main Street.
- EDC4. ADJOURNMENT** Chair/Mayor Esteves adjourned the joint Council/EDC meeting at 9:46 PM.

**REPORT OF COMMISSION** One item was approved on the consent calendar.

### **ORDINANCE**

7. New Ordinance related to Copper Discharge

Principal Engineer Kathleen Phalen explained the need for a minor amendment to existing ordinance to allow the City to have legal authority to prohibit copper contaminated discharge into the City storm drain system.

City Council members did not have any questions for staff.

City Attorney Ogaz read aloud the title of Ordinance No. 239.6, "An Ordinance of the City Council of the City of Milpitas Amending Chapter 16 of Title XI of the Milpitas Municipal Code Relating to Prohibited Discharges into Storm Drains."

(1) Motion: to waive the first reading beyond the title of Ordinance No. 239.6

Motion/Second: Councilmember Gomez/Vice Mayor McHugh

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

(2) Motion: to introduce Ordinance No. 239.6

Motion/Second: Councilmember Gomez/Councilmember Polanski

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

**RESOLUTIONS**

Two items were adopted on the consent calendar.

10. Resolution Approving MOU agreement with MPOA

Mayor Esteves requested this item off consent, in order to have a voice vote on the item. It was not a unanimous vote in Closed Session on the agreement two weeks ago. He repeated his objections to the dollar amount reduction, the lack of change in the formula for retirement, and felt it was not equitable to other employees with the furlough included and no pension reform.

Councilmembers Polanski and Gomez supported the concessions and complimented the City Manager for negotiating changes with the groups not in negotiation for MOUs.

Councilmember Giordano voted no, and did not want the contract extended.

Motion: to adopt Resolution No. 8085 approving the Memorandum of Understanding Agreement (side letter) between the City of Milpitas and Milpitas Police Officers Association (MPOA) to reflect the changes defined in the document and to extend the MOU through December 31, 2012

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

Motion carried by a vote of: AYES: 3  
NOES: 2 (Esteves, Giordano)

**BIDS/CONTRACTS**

Two items were approved on the consent calendar.

**ADJOURNMENT**

Mayor Esteves adjourned the City Council meeting at 9:52 PM in memory of Mr. Cecilio Reyes.

The foregoing minutes were approved by the Milpitas City Council as submitted on May 17, 2011.

  
Mary Lavelle  
City Clerk