

**MEETING MINUTES
CITY OF MILPITAS**

Minutes of: Regular Meeting of Milpitas City Council
Date: Tuesday, August 2, 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, Giordano and Polanski

ABSENT: None.

CLOSED SESSION

City Council convened in Closed Session to discuss performance reviews of the City Attorney and City Manager, and two potential cases of litigation.

City Council then convened in Open Session at 7:01 PM.

ANNOUNCEMENT

City Attorney Mike Ogaz announced that the Council authorized the filing of an amicus brief in the California Redevelopment Association lawsuit against the state regarding redevelopment, and to file an appeal of the “ransom” amount to be paid, if it was incorrectly calculated by the state.

PLEDGE

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

INVOCATION

Mayor Esteves provided a short reflection at the start of the meeting.

MINUTES

Motion: to approve City Council meeting minutes of June 7 and 21, 2011, as amended

City Clerk Mary Lavelle noted a correction on the June 21 minutes, to reflect that Vice Mayor McHugh was not present. He stated that he was absent from the meeting on June 21 due to his recent release from the hospital prior to the meeting.

Councilmember Polanski requested a correction to “PG&E” on page 4. She would abstain from voting on the minutes of that meeting, when she was absent.

Motion/Second: Councilmember Giordano/Councilmember Gomez

For June 7, 2011 meeting minutes:

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

For June 21, 2011 meeting minutes:

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

SCHEDULE OF MEETINGS

Motion: to approve the Council Calendar/Schedule of meetings for August, as amended

City Manager Tom Williams noted two additional meetings scheduled this month. The Campaign Finance Task Force would meet Monday, August 22 at 5:00 PM, and the Council’s Finance Subcommittee would meet Thursday, August 18 at 5:30 PM.

Vice Mayor McHugh announced there would be no Neighborhood Services and Education Subcommittee meeting in August.

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

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

PRESENTATIONS

Mayor Esteves proclaimed *World Breastfeeding Awareness Month* for August 2011. The proclamation was accepted by Tracy Jedrzejek, Regional Breastfeeding Liaison Services.

PUBLIC FORUM

Carol Kassab, Milpitas Chamber of Commerce CEO, announced the local trade show planned for August 17, to which all City Councilmembers were invited.

ANNOUNCEMENT

City Manager Williams requested Police Commander Pang to announce the annual "National Night Out" event in Milpitas, on Thursday, August 4, with up to 30 neighborhood hosted events, between 5:00 and 9:00 PM. Police would share crime prevention and safety information with the neighborhood residents.

Councilmember Polanski announced that Thursday, August 4 at 12 noon, was a meeting of the county's Emergency Preparedness Council and would feature Sean Simonson from Milpitas OES giving a presentation to the group.

Councilmember Giordano thanked the Mayor publicly for his work with PG&E recently. She thanked the Milpitas Historical Society for its display in the City Hall lobby case. City-sponsored fireworks on July 4th were a great event, meanwhile a group of volunteers collected many illegal fireworks that day, which she appreciated and displayed their photo overhead.

Councilmember Giordano read aloud a letter of thanks from resident Jake Janitz, thanking the Police Chief for helpful information provided. She read a letter from Terrace Gardens property manager thanking the City for Community Development Block Grant funds to upgrade kitchens in the senior apartments. Next, she responded to issues in an e-mail from resident Dan Manassau to Mayor Esteves. She discussed rumors alleged by residents and regarding meetings at the City Council Chambers. She asked the City Attorney to look into enforcement of the Open Government Ordinance, and the requirement for the Mayor to post meetings on the web calendar. Finally, she wanted to add to a request that she get a copy of records of all entry to City Hall, for the last three months, including videotapes of entry to City Hall by card key.

Mayor Esteves thanked residents who applied for Commission vacancies. Still, there was a need for resident applicants for the Mobile Home Park Rental Review Board to fill this board.

ANNOUNCEMENT OF CONFLICT OF INTEREST

None.

APPROVAL OF AGENDA

Motion: to approve the agenda, as amended

City Manager Williams stated a request from the applicant to continue the Public Hearing (Item No. 1) to the next Council meeting date, August 16.

Motion/Second: Councilmember Polanski/Councilmember Gomez

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 removal of Items No. 8 and No. 28 from consent.

Motion/Second: Councilmember Giordano/Councilmember Polanski

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

- * 6. Odor Control Report Received the June and July 2011 odor reports.
- * 7. Commission Appointments Arts Commission/Public Art Committee
Appointed Manjula Gupta as a regular member to a term that expires in October 2011.
Newly appointed Robert Gill as Alternate No. 1 to a term that expires in October 2012.
- Community Advisory Commission: newly appointed Shirley Meirose as Alternate No. 4 to a term that expires in January 2012.
- Emergency Preparedness Commission
Re-appointed Russ Cherry and Tim Howard to terms that expire in June 2014
Re-appointed Pamela Wells as Alternate No. 2 to a term that expires in June 2013.
- Library Advisory Commission: re-appointed Carmen Montano to a term that expires in June 2013. Re-appointed Ha Phan as Alternate No. 1 to a term that expires in June 2013.
- Veterans Commission: newly appointed Eladio Aoalin as Alternate No. 2 to a term that expires in February 2013.
- Youth Advisory Commission
Newly appoint Pilar M. Ferguson to a term that expires in September 2012.
Newly appoint Jose L. Ajero III to a term that expires in September 2012.
Newly appoint Randolph T. Abaya to a term that expires in September 2012.
- Appointments to Youth Advisory Commission would be effective for the first meeting in October.
- *10. Progress Report 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, CIP No. 7102.
- *11. Trash Truck to Auction Authorized the Purchasing Agent to auction the 1998 Ford F800 Trash Truck.
- *14. Ordinance No. 218.3 Waived the second reading and adopted Ordinance No. 218.3 amending Chapter 13 of Title III of the Milpitas Municipal Code relating to transient occupancy tax refunds.
- *15. Resolution – Final Acceptance of Projects 5085 and 5088 Adopted Resolution No. 8107 granting final acceptance of the Cardoza Park Playground Renovation and Electrical Cabinet Upgrade, Projects No. 5085 and No. 5088, and release of the contractor's bond.
- *16. Resolution of Final Acceptance of Project No. 5087 Adopted Resolution No. 8108 granting final acceptance of the Calle Oriente Park, Project No. 5087 and release of the contractor's bond.
- *17. Authorizing Participation in County's AVASA Adopted Resolution No. 8109 authorizing continued participation in the Santa Clara County Abandoned Vehicle Abatement Service Authority.
- *18. Resolution of Initial Acceptance of Project No. 7101 Adopted Resolution No. 8110 granting initial acceptance of the Gibraltar Reservoir and Pump Station Improvements, Project No.7101, subject to a one-year warranty period, and reducing the faithful performance bond to \$640,336.
- *19. Resolution Approving Purchase of Protective Fire Gear Adopted Resolution No. 8111 approving the sole source purchase of 46 pairs of Wildland Personal Protective pants and jackets from Cascade Fire Equipment for the not-to-exceed amount of \$20,117.18.

(2) Motion: to adopt Resolution No. 8104 confirming the weed abatement report and confirming parcel assessments for weed abatement for 2011

Motion/Second: Councilmember Polanski/Councilmember Giordano

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

UNFINISHED BUSINESS

One item was approved on the consent calendar.

3. Report on Alviso Adobe Renovation Project

City Engineer Greg Armendariz provided an update to the City Council on steps taken to improve the site at the Alviso Adobe park, where much improvement had been completed outside the home. Internal renovations would still be necessary; however, that part of the improvement project was not yet funded. He showed photographs and conceptual park improvements on an overhead display.

Councilmember Polanski requested clarification regarding the fact that Shappell Co. made the donation of funds to the Milpitas Historical Society, which then provided funds to the City for part of the cost of the park renovation and adobe exterior.

Mayor Esteves asked if the building would be closed when the park opened and staff confirmed it would.

City Manager Williams explained the plan was to eventually upgrade the interior of the building, with a current cost estimate near \$1 million, not yet funded.

Motion: to receive the progress report from the City Engineer/Director of Public Works on the Alviso Adobe project progress

Motion/Second: Councilmember Giordano/Councilmember Polanski

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

4. Report on BART extension

City Engineer Greg Armendariz provided an update on recent activity, schedule and right-of-way acquisition related to the expansion of Bay Area Rapid Transit into Milpitas. He reported there were 51 affected properties in Milpitas, regarding fee takes and easements.

Councilmember Gomez inquired about the policy that Valley Transportation Authority followed with regard to eminent domain and taking of property for the project. Staff responded they had a methodical process they must follow by law.

Vice Mayor McHugh reiterated his earlier request about a monthly update report with details on parcels affected by the BART project, and the impacts to property owners.

Councilmember Giordano wanted to know if VTA staff was in the community explaining mitigation measures. Mr. Armendariz replied yes, he was aware of community meetings hosted by VTA on the project impacts.

Motion: to receive the progress report from the City Engineer on the BART extension project in Milpitas

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

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

5. Report on Proposals for Pre-school Age Program

Parks and Recreation Director Bonnie Greiner reported to the Council on the outcome of City's outreach to preschool providers in the City of Milpitas, after issuing a Request For

Proposals (RFP) in June, and after meeting with former program participant parents. 32 invitations to submit responses to the RFP were sent out, and phone calls were made to all of those schools. Three pre-schools downloaded bid documents, and one submitted a completed proposal. The intent was to start offering program classes in September with registration starting later this month.

An additional note was that Elan Esprit was interested in interviewing former City staff, to consider hiring them for the program offered at the City facility at the Community Center.

Councilmember Polanski thanked City staff for working on this program, and was pleased former preschool parents were involved in the process. This way, services were still offered to the community as the parents had wanted.

Councilmember Gomez and Vice Mayor McHugh complimented staff, and thanked Councilmember Polanski for bringing this issue forward.

Councilmember Giordano inquired about liability issues. Ms. Greiner replied that the Elan Esprit preschool would need to provide proof of insurance as part of the contract.

Motion: to receive the staff report on Milpitas pre-school age enrichment program (recreation classes) and authorize the City Manager to award and execute a one-year contract with Elan Esprit Preschool Inc.

Motion/Second: Councilmember Polanski/Councilmember Gomez

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

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 8:44 PM.

ROLL CALL

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

ABSENT: None

RA 2. MINUTES

Motion: to approve the Agency meeting minutes of June 7 and 21, 2011

Councilmember Polanski announced she would abstain from voting on the June 21 minutes, when she was absent.

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

For June 7 minutes:

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

For June 21 minutes:

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

RA 3. Agenda Approval and Consent Calendar

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

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

Motion carried by a vote of:

AYES: 5

NOES: 0

**RA 4. Report on State
Legislative Changes and Local
Impacts**

City Manager Tom Williams gave an overview of the Agency's future, based on two significant pieces of state legislation which would effectively dissolve the RDA, unless large payments were made to the state, as required. He provided detailed information into the amounts necessary for the payments, and what obligations remained for the Agency.

Finance Director Emma Karlen reviewed some items currently paid for out of the RDA fund, for example debt repayment, operations including staff, administration, services and supplies. The current Capital Improvement Program project funding would be significantly impacted, staff noted. Councilmember Gomez asked what service impacts there would be and Ms. Karlen responded with items such as staffing levels and street improvements.

Councilmember Polanski stated these items were considered core services, as she had discussed at budget time.

Vice Mayor McHugh noted that an additional \$10 million would be added to the deficit. The City Manager confirmed this essential fact. Mr. Williams said he would return to Council with alternatives and his solid recommendation to implement on this matter.

Options discussed by the City Manager, based on the adopted state legislation, were to maintain the Agency by paying the state as required or to dissolve the RDA. Mr. Williams recommended adopting an ordinance by the November deadline to comply with the "voluntary" payment program in order to maintain the Milpitas RDA. Furthermore, the City could later consider a potential revenue measure targeting the June 2012 ballot, for increased revenue.

Councilmember Gomez asked about elected officials in the legislature who represent Milpitas and their help to the City. The Manager replied that both the State Senator and the Assemblyman voted for the Governor's budget. Mr. Gomez was supportive of his recommendation and complimented City staff for efforts already made to reduce expenditures.

Mayor Esteves asked about the target date for proposals to deal with elimination of the \$6 million from the Agency to the City annually. The City Manager replied, by the next fiscal year. The Mayor said he would not want to cut any funds from the CIP for streets maintenance in this City.

Councilmember Polanski was not comfortable with the choices she felt forced to make.

Councilmember Giordano commented on what was successful, with services still delivered to community, basically at the same level currently as in the past.

Vice Mayor McHugh reminded all that this matter was being litigated, and he felt cities would prevail in court. Meanwhile, they had an obligation to plan to preserve the Agency. He felt the City Manager should be directed to come back with what they can do to overcome the \$6 million hit to the budget.

Mayor Esteves stated that reorganization was most important to him, of the choices offered. Even with the Redevelopment Agency, the City was still facing projected deficits, so the City Council must learn to manage those.

Motion:

A) to receive the report from staff including moving forward to adopt an ordinance by the November deadline to maintain the RDA via the Voluntary Program, and

B) to direct the City Manager to: (1) proceed with reorganization of the City's operating structure and service delivery model to overcome elimination of \$6.0 million annually to General Fund, (2) amend the adopted Capital Improvement Program to compensate for the \$3 - \$6 million loss of Agency funds, and (3) proceed with a community survey, outreach program and plan for a potential revenue measure targeted for June 2012 ballot

Mayor Esteves opposed only the third item of those recommended by the City Manager.

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

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

*RA5. Investment Report Received the investment portfolio status report for the quarter ended June 30, 2011.

*RA6. Two Resolutions Adopted City Council Resolution No. 8105 and Redevelopment Agency Resolution No. RA420, approving the Annual Investment Policy for the City of Milpitas and the Redevelopment Agency.

RA 7. ADJOURNMENT Chair/Mayor Esteves adjourned the Redevelopment meeting at 9:28 PM.

REPORTS OF MAYOR/COUNCIL

8. Information on Council salary and benefits Mayor Esteves announced why this information was provided on the agenda. In the past, a newspaper stated that the City had not released this type of information about Council pay and benefits. He wanted staff to explain what was "other pay" on the report.

Councilmember Polanski asked for explanation of the difference between PERS and PARS, and on the columns and definitions.

Human Resources Director Carmen Valdez reviewed the columns of information in the report included in the agenda packet on 2010-11 Councilmembers' pay and benefits.

Motion: to receive the report from staff on elected officials' salary and benefits

Motion/Second: Councilmember Polanski/Councilmember Gomez

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

City Council took a break at 9:49 PM and returned to the meeting at 10:00 PM.

9. Neighborhood Beautification Councilmember Giordano had requested a report on neighborhood code enforcement and beautification. She cared about how to encourage neighborhood preservation, and how to stay successful with the program in the City currently.

Senior Housing & Neighborhood Preservation Specialist Gloria Anaya came forward to give an oral report, and she reviewed the figures for cases reported and resolved in Fiscal Year 2010-11. Staff was able to close 66% of the cases within 30 days.

Councilmember Giordano asked for an explanation of what was considered an abandoned vehicle, and if those were on public or private property.

Mayor Esteves thanked staff for their work and ongoing efforts with all the cases. He commented on 742 cases in one year, which seemed like a lot to him. He suggested neighbors talking to neighbors on these issues, and offering help to resolve matters.

Councilmember Giordano suggested that maybe staff could distribute literature at the upcoming "National Night Out" hosted events in Milpitas neighborhoods on Thursday.

Motion: to receive the report from staff Gloria Anaya on the success of the Neighborhood Beautification program in FY 2010-11

Motion/Second: Councilmember Giordano/Councilmember Gomez

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

NEW BUSINESS

Two items were approved on the consent calendar.

ORDINANCES

One ordinance was adopted on the consent calendar.

12. Resolution and Ordinance No. 101.21 to Amend Contract with PERS for 2% at 60

Human Resources Director Carmen Valdez explained the steps necessary to implement a new, revised retirement formula offered to employees hired in the future, in the non-public safety workforce. The change would be to apply the 2% at age 60 PERS retirement formula (versus 2.7% at age 55 presently), along with a calculation of the average of the three highest years' salary (versus highest year presently).

Mayor Esteves confirmed this change was for non-public safety employees. City Manager Tom Williams explained the approach to Fire and Police employees, with the proposal to change to a 3% at age 55 formula (versus current 3% at age 50), to be negotiated with those union groups.

(1) Motion: to adopt City of Milpitas Resolution of Intent No. 8106 to amend the City's current contract with PERS to change the retirement formula to 2% at age 60 for newly hired non-public safety employees

Motion/Second: Councilmember Polanski/Councilmember Gomez

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

City Attorney Mike Ogaz read aloud the title of Ordinance No. 101.21.

(2) Motion: to waive the first reading beyond the title of Ordinance No. 101.21

Motion/Second: Councilmember Polanski/Vice Mayor McHugh

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

(3) Motion: to introduce Ordinance No. 101.21

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

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

13. Ordinance No. 23.13 regarding surplus canines

City Attorney Ogaz explained the needed change to the City's purchasing ordinance with regard to canines (dogs) in Police service, such that the animals could be returned to the handlers when they are ready for "retirement" from service. It was considered a municipal code "clean-up" action.

Next, Mr. Ogaz read aloud the title of Ordinance No. 23.13.

(1) Motion: to waive the first reading beyond the title of Ordinance No. 23.13

Motion/Second: Vice Mayor McHugh/Councilmember Gomez

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

(2) Motion: to introduce Ordinance No. 23.13

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

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

RESOLUTIONS

Five resolutions were adopted on the consent calendar.

BIDS/CONTRACTS

Eight items were approved on the consent calendar.

28. Agreement for Fire Department Inspection Services

Councilmember Polanski asked if this subject was a core service and how long had the City contracted for fire inspection.

Fire Marshal Albert Zamora addressed the Council, explaining the savings of \$140,000 annually to the City by hiring a contracted inspector - versus the \$200,000 cost for a full time employee. A full level of customer service was offered to the customers in terms of required inspection. This was the second year of this contracted service and it was providing expertise by an experienced inspector.

Councilmember Polanski commented that in the past, such arrangements have gone on for a long time, and she would seek to review this carefully when people retire and then the City hired back those retired, when meanwhile, others were out of work. She urged retired people to enjoy their retirement, and the City should hire where needed.

Mayor Esteves used the term "double dipping" and this would have to be justified. He was not happy with this scenario, and it was sole source also.

Vice Mayor McHugh remarked that the economic case does make sense in this instance, for the time being.

Councilmember Giordano asked the Mayor what was his definition of double dipping. Mayor Esteves responded a retiree getting a pension and then going back to the same system and earning money again.

Councilmember Gomez had no problem with this agreement and was ok with hiring a retired person to do a job at the reduced rate.

Motion: to approve the agreement with Frank Martorella for fire inspection services for a total amount not-to-exceed \$62,400 annually

Motion/Second: Vice Mayor McHugh/Councilmember Gomez

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

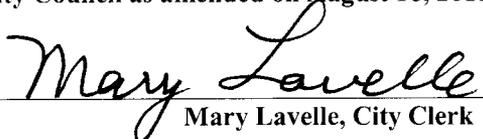
DEMAND

One demand for payment was approved on the consent calendar.

ADJOURNMENT

Mayor Esteves adjourned the City Council meeting at 10:30 PM.

The foregoing minutes were approved by the Milpitas City Council as amended on August 16, 2011.


Mary Lavelle, City Clerk