

*Draft* **MEETING MINUTES**  
**CITY OF MILPITAS**

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

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**ROLL CALL**

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

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

**ABSENT:** None

**CLOSED SESSION**

City Council convened in Closed Session to discuss three items: labor negotiations, performance evaluations, and an existing case of litigation, Milpitas v. George Lund.

City Council then convened in Open Session at 7:02 PM.

**ANNOUNCEMENT**

City Attorney Ogaz announced on the litigation matter City v. Lund, the City Council authorized a receiver for the property at 168 Corning, if not cleaned up by November 7.

**PLEDGE**

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

**INVOCATION**

Mayor Esteves offered a prayer to start the meeting.

**MINUTES**

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

Vice Mayor McHugh corrected the name of a Council subcommittee on page 2.

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

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

**SCHEDULE OF MEETINGS**

Motion: to approve Schedule of Meetings/Council Calendars for October and November 2011

Motion/Second: Councilmember Polanski /Vice Mayor McHugh

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

**PRESENTATION**

Mayor Esteves proclaimed October 2011 as *Filipino American History Month*, and the proclamation was accepted by Ms. Evangeline Valbuena, President of the Bayanihan Movement Inc., an organization which studies Filipino history and culture in the United States.

**PUBLIC FORUM**

Robert Marini, Milpitas resident, asked if the public could speak on the Senior Center operating hours, and the Mayor replied yes.

Debra Lax, Milpitas resident and TV Channel 26 manager, thanked the City Council for its support of the upcoming event on October 26 from 10:30 to 12:30 PM celebrating five years of MCTV on the air. More information was available on milpitasstv.org.

Frank DeSmidt, Milpitas Rotary Club, spoke to the Council about the Milpitas Community Pumpkin Patch, now open on Calaveras Blvd. There were lots of pumpkins and rides available for kids and families.

**ANNOUNCEMENTS**

Vice Mayor McHugh thanked Sister Cities Commissioner Karen Serpa for her contact with a city near Florence, Italy, with an interest to make a presentation to the Commission.

Councilmember Giordano announced that the Milpitas Rotary Club would raise money for children in Nicaragua, by way of a "Bowl Off" event between her and Fire Chief Sturdivant on Monday, November 14 at 6:00 PM at Mission Lanes Club.

Mayor Esteves noted recent Diwali Days events for the celebration of lights and thanked several organizations celebrating this Indian festival. Congratulations to graduates of Heald College in Milpitas. He offered condolences to the family of Milpitas employee Alethea Nogalez.

**ANNOUNCEMENT OF CONFLICT OF INTEREST**

None.

**APPROVAL OF AGENDA**

Motion: to approve the agenda, as amended

City Manager Tom Williams asked to continue Item No. 9 to the next Council meeting. Also, on Item No. 8, it should state Report of Arts Commission in the heading of the item.

Motion/Second: Vice Mayor McHugh/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

Councilmember Giordano requested removal of Item No. 6 from consent.

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

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

\* 8. Award Milpitas Arts and Culture grants

Approved seven Milpitas Arts and Culture Grants for in-kind performance space and City staff support to: Calaveras Repertory Theatre, Fancy Dancers, Inc., Filipino American Association of Milpitas, Inc., Golden Hills Art Association, Milpitas Alliance for the Arts, Milpitas Camera Club, and San Jose Wind Symphony.

\*11. Grant from Parks and Recreation Foundation

Accepted the Milpitas Parks and Recreation Foundation grant in the amount of \$3,200 to be incorporated into the Milpitas Parks and Recreation Department budget for Rainbow Theatre and the Recreation Assistance Program (RAP).

\*12. Temp. Building Inspector

Approved Lyon Communities' request for a dedicated building inspector, and approved a budget appropriation of \$93,760, less the administrative fee, into the Building and Safety Department's budget for remaining eight months of FY 2011-12.

\*13. Fee Waiver for Unity Day

Approved fee waiver for Alcoholics Anonymous totaling \$891.50 for the August 19, 2012 annual *Unity Day* event at the Milpitas Community Center.

\*14. 2012 Meeting Schedule

Approved the 2012 regular City Council meeting schedule, including the cancellation of the July 2012 City Council meetings.

\*16. Agreement to Agreement with Camp, Dresser & McKee

Authorized the City Manager to execute amendment No. 1 to the agreement with Camp, Dresser & McKee for professional engineering services supporting Solid Waste program.

\*17. Joint Use Agreement for Coyote Creek Trail Reach 1

Determined that the proposed joint use agreement was exempt from CEQA, pursuant to Section 15162 of the CEQA Guidelines, and authorized the City Manager to execute a joint use agreement with the Santa Clara Valley Water District for recreational use of Coyote Creek Trail Reach 1.

\*18. Emergency HVAC Repairs by ACCO Eng.

Received a report on emergency repairs for the City Hall Heating, Ventilation and Air Conditioning (HVAC) work by ACCO Engineered Systems and authorized the City Manager to execute the contract with ACCO Engineered Systems.

## **PUBLIC HEARING**

1. 2011 Edward Byrne Justice Assistance Grant for Police

Police Lieutenant Sandy Holliday discussed the \$13,913 grant from the U.S. Justice Department to be used towards portable radios for police officers in the field. The JAG funds required no City matching funds and must be used for direct line service.

Mayor Esteves opened the public hearing and heard no speakers.

(1) Motion: move to close the public hearing

Motion/Second: Councilmember Polanski/Councilmember Gomez

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

(2) Motion: to adopt Resolution No. 8128 to accept the 2011 Edward Byrne Justice Assistance Grant in the amount of \$13,913.00

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

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

(3) Motion: to approve an appropriation in the amount of \$13,913.00 into the Police Department's operating budget

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

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

## **UNFINISHED BUSINESS**

2. Resolution Opposing More Inmates to Elmwood Jail

Mayor Esteves explained that he sought the resolution in order to express opposition from the City on the issue of the planned release of more state prisoners into the County jail system, and the expected increase in residents at Elmwood Jail.

Police Chief Graham responded to a variety of questions from Councilmembers.

Vice Mayor McHugh supported the Resolution and efforts made to pursue reimbursement from the County for police and fire service calls to the jail.

Motion: to adopt Resolution No. 8129 opposing the move of additional inmates to Santa Clara County's Elmwood Jail in Milpitas

Motion/Second: Councilmember Polanski/Vice Mayor McHugh

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

**3. Compliance with Open Government Requirement on Posting Calendars**

Councilmember Polanski went to the podium to give a presentation to City Council about their online calendars. She displayed examples for all the members for month of June.

City Attorney Ogaz read aloud the definition of “willful failure” from a law dictionary, in reply to question from a Councilmember. Enforcement of the Open Government Ordinance sections was discussed, and Mr. Ogaz agreed he and his office enforced all ordinances of the City.

Councilmembers identified their efforts to post the calendars, in routine fashion, with some challenges. Mayor Esteves wanted to have a standard procedure to follow and what was to be included as the mandatory fields, with minimum ones to satisfy the ordinance. City Council could give feedback later on the process.

Information Services Director Bill Marion discussed the use of calendar tools by Google and Microsoft Outlook.

Councilmember Polanski did not want to make the process cumbersome and sought agreement on compliance with Open Government.

The City Council noted that the City Attorney could work effectively with the Information Services Director to clarify instructions on what to post online. No vote was taken.

**4. Report on Senior Center Operating Hours**

Parks and Recreation Director Bonnie Greiner reported information about the Barbara Lee Senior Center, its operating hours, and events and programs. She described the survey completed earlier this year, February through April, with 83 completed surveys returned.

In response to City Councilmember questions, she described some of the special events and trips out of Milpitas, by the seniors.

Mayor Esteves asked if seniors attend the Milpitas Sports Center and Ms. Greiner replied yes, quite a lot. He then invited speakers from the audience.

Robert Marini, Milpitas resident, stated the problem with the survey. He did not believe the survey was noticed sufficiently.

Debra Whitlock Lax, Milpitas resident, had recently turned age 50 and joined the Senior Center. She would be glad if the Center could be opened on the weekend. She would not go there with her family on weekends but would go to the Sports Center.

Motion: to note receipt of report and file

Motion/Second: Councilmember Giordano/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 8:28 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 September 20, 2011

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

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

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

Mayor Esteves commented, on Carlo Street (re: Item No. RA5), there was a need for signs on how to return to 237/Calaveras Blvd. when exiting the Milpitas Library.

**\*RA4. Resolution**

Adopted Resolution No. RA423 amending the Enforceable Obligation Payment Schedule.

**\*RA5. Resolution Granting Final Acceptance CIP No. 8195**

Adopted Joint Resolution No. RA424 / 8130 granting final acceptance of the Carlo Street Ramp Conversion, Project No. 8195, and release of the contractor's bond.

**\*RA6. Resolution Granting Initial Acceptance of Project No. 8162**

Adopted Joint Resolution No. RA425 / 8131 granting initial acceptance of the North Main Street Parking Lot Resurfacing Project No. 8162, subject to a one year warranty period and reduction of the faithful performance bond to \$6,222.

**\*RA7. Time Extension for Development Agreement**

Approved the two year time extension request for the Disposition and Development Agreement with South Main Street Senior Lifestyles, LLC, and authorized the Executive Director to execute an amendment memorializing the extension.

**RA 8. ADJOURNMENT**

Chair/Mayor Esteves adjourned the Redevelopment Agency meeting at 8:29 PM.

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

**EDC 1. CALL TO ORDER**

Mayor/Agency Chair Esteves called to order the regular meeting of the Milpitas Economic Development Corporation meeting jointly with City Council at 8:29 PM.

**ROLL CALL**

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

**ABSENT:** None

Councilmember Gomez departed the dais at 8:30 PM, and returned shortly thereafter.

**EDC2. Approval of Agenda**

Motion: to approve the agenda

Motion/Second: Board/Councilmember Polanski / Board/Councilmember Giordano

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

Councilmember Polanski departed the dais at 8:31 PM and returned shortly.

**EDC3. Agreement with Chamber of Commerce**

Economic Development Manager Diana Barnhart discussed four categories of activity by the Milpitas Chamber of Commerce in the BRIM (Business Retention in Milpitas) program. The Chamber had achieved 237 points, according to terms of contract, toward the quarterly goal of 250.

Ms. Carol Kassab, CEO of Milpitas Chamber of Commerce, discussed the findings of the Chamber's efforts in the first quarter. Ms. Kassab gave an extensive oral report on response to the outreach survey conducted by the Chamber members to specific Milpitas



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

## 6. Commission Appointments

Councilmember Giordano had requested this item off the consent calendar. She asked if the Mayor wanted to make statements if those recommended for appointment had donated to his campaign. He said sure and replied that none of those recommended had donated.

Motion: to approve the following appointments, recommended by the Mayor:

Arts Commission/Public Art Committee:

Re-appoint Becky Strauss to a term that expires in October 2014.

Public Art Committee (Alliance for the Arts seat):

Newly appoint Cyd Mathias to a term that expires in October 2014.

Parks, Recreation, and Cultural Resources Commission

Appoint Rohit Sharma as a regular member to a term that expires in June 2012.

Appoint Mikaela Garcia as Alternate No. 1 to a term that expires in June 2012.

Newly appoint Garry Barbadillo as Alternate No. 2 to a term that expires in June 2013.

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

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

## 7. Public Art Project for the Alviso Adobe Park

This item was heard after the break at 9:21 PM.

Recreation Services staff Renee Lorentzen discussed the proposed art project for the Alviso Adobe. She provided history on the two final proposals (Farm Wagon and Water Tower), the timeframe, \$20,000 cost, and the recommendation from the Public Art Committee for the Tower piece.

Mayor Esteves inquired about many details of both art pieces. With the balance of funds available in the public art funds budget, he believed that the two art pieces should be funded and installed at the Alviso Adobe Park.

Councilmember Gomez discussed priorities for City spending, such as for streets and potholes. He would vote no on the Mayor's suggestion.

Councilmember Polanski noted art was not one of the City core services and she would not favor two art pieces at the park.

Councilmember Giordano supported putting both pieces at that site, after a lot of work that went into the recommendation from the Public Art Committee.

Mayor Esteves next asked for speakers from the audience.

Bill Foulk, Chairman of the Public Art Committee, described the wagon piece details, and the idea that the pieces were not interactive, but could be touched and were sturdy. He did not support funds being moved from Public Art into streets.

Motion: to approve both the Public Art Committee's recommended "Water Tower" for the Alviso Adobe Park art installation project and in addition the Wagon Sculpture

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

Motion carried by a vote of: AYES: 3  
NOES: 2 (Gomez, Polanski)

## **NEW BUSINESS**

### **9. Economic Development Report**

This item was removed from the agenda.

### **10. Pavement Maintenance Program**

City Engineer/Director of Public Works Greg Armendariz updated Council on the neighborhoods and streets that had been repaved, and the program for preventive maintenance, including pothole repair, slurry seal and asphalt. The City's Pavement Condition Index had improved to a level of 69 (from previous 67 earlier this year), due to the summer program work on roads in the City.

Mayor Esteves inquired how much funding was needed to maintain a high PCI, and not go down, and staff responded \$2 million.

Councilmember Polanski inquired about multi-lingual information to residents for notifications on the street re-paving and slurry seal work.

Councilmember Gomez inquired how much money from the Transient Occupancy Tax could be spent on any need in the City, and the Finance Director said about \$6 million.

No vote was taken following the conclusion of Mr. Armendariz' oral report.

## **ORDINANCE**

### **15. Ordinance No. 243.4 related to Campaign Finance**

City Attorney Mike Ogaz reviewed changes to the campaign finance ordinance that he included in the new version of the text recommended for adoption at this meeting. Changes were directed by Council at the first reading and staff also made modifications.

Mr. Ogaz noted independent expenditure committees (IECs) were eliminated from the section on aggregation requirements. Additional filing requirement for IECs was changed to verbal disclosure, not any paper reports. He recommended removing all wording on the section on registration of volunteer v. paid campaign consultants, and to add a specific campaign consultant definition. He added parameters to the section on Council meeting disclosures, to apply only to items involving a public hearing or a contract involving \$50,000 or more.

Attorney Ogaz recommended adding a definition of campaign consultant as follows: "Any person or entity that develops campaign strategy in an effort to elect, defeat, retain or recall an officeholder or candidate for elected city office who dedicates over 10 hours of time developing or contributing to that campaign strategy."

Councilmember Giordano stated her objections to sections of the proposed ordinance. She referred to and quoted from a letter from attorney Charles H. Bell Jr. dated October 13, 2011. She believed this ordinance would violate free speech rights and the Constitution.

City Attorney Mike Ogaz responded to Councilmember Giordano. He opposed several of the comments in the attorney's letter. Mr. Ogaz responded to Ms. Giordano's questions about personal liability and Council's risk, if the ordinance was adopted.

Councilmember Gomez asked the City Clerk when Mr. Bell's letter was received, and she responded today by e-mail. Mr. Gomez felt the letter, as was done at the last meeting date, was submitted intentionally at the last minute. His view was that the changes were not overwhelming.

Councilmember Polanski agreed with changes recommended by the City Attorney in the new amended version of the ordinance. She stated that the campaign ordinance requirements would not violate the oath she took as an elected official.

Mayor Esteves asked whether the ordinance was applicable to ballot measures as well as candidates. Councilmember Gomez responded that the section on campaign consultants was intended for candidate elections, not ballot measure committee consultants. The City Attorney commented that reference to ballot measures could be removed.

Mayor Esteves was favorable to the major sections of the proposed ordinance, but not the new campaign contribution amount of \$500. He thanked the members of the campaign Task Force and these updates would benefit the community.

Next, the Mayor invited speakers from the audience.

Bobby Lopez, resident of Discovery Bay and a representative of the Silicon Valley Fraternal Order of Police Lodge 52, the largest organization of sworn law enforcement officers with 325,000 members, was the voice of those who serve and protect. He felt there should be no restrictions on independent expenditure committees and on political speech and activity, especially on those who volunteer for campaigns.

Bill Ferguson, Rivera St. Milpitas resident, opposed the increase of the campaign contribution limit from \$350 to \$500. He termed it an “incumbency protection” action, and it would strengthen corporations, not people.

Vice Mayor McHugh noted all Councilmembers at one time were not incumbents.

Mayor Esteves expressed his support for the major sections of the ordinance, but he did not agree with the increase in the contribution limit. He believed disclosure was healthy, with benefits for the public.

(1) Motion: to waive the second reading of Ordinance No. 243.4

Motion/Second: Councilmember Gomez/Councilmember Polanski

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

(2) Motion: to adopt Ordinance No. 243.4, as amended since the first reading of the ordinance on September 20, 2011, including the deletion of language on applicability to ballot measure committees and adding the campaign consultant definition

Motion/Second: Councilmember Gomez/Vice Mayor McHugh

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

## **BIDS/CONTRACTS**

Three items were approved on the consent calendar.

## **ADJOURNMENT**

Mayor Esteves adjourned the City Council meeting at 11:16 PM.

*Meeting minutes respectfully submitted by  
Mary Lavelle, City Clerk*