

Draft **MEETING MINUTES**
CITY OF MILPITAS

Minutes of: **Regular Meeting of Milpitas City Council**
Date: **Tuesday, December 6, 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 Giordano and Polanski

ABSENT: Councilmember Gomez. He arrived for the 7:00 PM open session of the meeting.

CLOSED SESSION

City Council convened in Closed Session to discuss labor negotiations with two employee groups, Milpitas Police Officers Association and Mid-Management/Confidential group, and performance review of the City Attorney.

City Council then convened in Open Session at 7:09 PM.

ANNOUNCEMENT

City Attorney Mike Ogaz announced that agreement was reached by the Council on a Milpitas Police Officers Association contract on vote of 3 in favor, 1 opposed (Esteves), and 1 absent (Gomez). Mayor Esteves commented he would have preferred an average of three highest years' salary, not single highest year (as retirement was currently calculated for retiring police officers).

PLEDGE

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

INVOCATION

Vie Mayor McHugh introduced Pastor Ritche Bueza, originally from the Philippines, of St. John the Baptist Catholic Church in Milpitas, who provided a prayer to start the meeting.

MINUTES

Motion: to approve City Council meeting minutes of November 15, 2011, as submitted

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 December 2011, as amended

City Manager Tom Williams noted that the Santa Clara Valley Transportation Authority Milpitas-Gilroy-Morgan Hill (VTA MGM) group meeting was scheduled on December 7 at 10:00 AM.

Vice Mayor McHugh noted that the Santa Clara VTA Executive Board meeting start time was 8:30 AM (not 9:00 AM as written) on December 8.

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

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

PRESENTATION

Mayor Esteves recognized Girl Scouts Service Unit 620 and Brownie Troop for their efforts making handmade greeting cards for military service personnel at the November 11 Veterans Day ceremony in Milpitas.

PUBLIC FORUM

Kevin Lu, Shelly Ct. resident and Milpitas High School student, discussed his goal to work toward reducing obesity in Santa Clara County. He recommended having more farmers markets with fresh produce, among other ideas.

Robert Marini, Milpitas resident, stated that growing the city the right way was marginalizing the right to vote, with regard to water and sewer rates of residents.

ANNOUNCEMENT

In reply to Mayor Esteves, City Attorney Mike Ogaz stated there was no impropriety, as a result of communication, by any City official or employee, based on a prior question from Councilmember Giordano regarding a visa request letter the Mayor wrote.

The City Attorney reported that staff would make available to the public the salary survey of city managers and the Mayor requested copies made at the meeting for anyone in the audience.

Councilmember Giordano discussed reports that were recently in the local newspaper and corrections necessary to two articles. She requested the City Attorney, in writing, to provide copy of the Mayor’s response to the communication from an e-mail alert from the (US Consulate in China) fraud unit and provide it to all of her colleagues, by one week from next Monday. Lastly, she asked for a report on the next agenda of the amount of City of Milpitas taxpayer dollars, and school dollars, given to the Milpitas Post newspaper for advertisements.

Vice Mayor McHugh thanked Parks & Recreation Director Bonnie Greiner and the Milpitas Parks & Recreation Foundation for an excellent event, the “Festival of Trees” last Thursday night. He also announced that the City of Milpitas would have a representative on the Executive Board of the Santa Clara Valley Transportation Authority (VTA) starting next month, which was good news for the City, as BART begins its expansion through Milpitas to Berryessa. Mayor Esteves noted that the Vice Mayor would be the Board member, from the City of Milpitas.

Councilmember Polanski offered congratulations to staff and the Parks & Recreation Foundation for both the Festival and the annual Tree Lighting ceremony. She was now using an ipad device to receive the Council agenda packet, helping to save paper. She wished happy holidays to all.

Councilmember Gomez requested, in January, a report on the tab for all resources that went into the “Black Friday” shopping day preparation. He wanted to know why the City did not charge for those services, including Police and Fire departments.

Mayor Esteves offered Merry Christmas greeting to all. He asked the City Manager to state when City offices would be closed during the upcoming holidays. Mr. Williams responded on Friday, December 23 and on Monday, December 26. Mayor Esteves asked staff to take care of posting the new campaign finance ordinance recently adopted on the City’s website.

ANNOUNCEMENT OF CONFLICT OF INTEREST

None.

APPROVAL OF AGENDA

Motion: to approve the agenda, as amended

Vice Mayor McHugh asked for items No. 12 and 13 be moved up to be heard after Item No. 2.

Councilmember Giordano commented about the process on Item No. 8 on the agenda. First, she wanted it removed and then asked the City Manager to find out if other members talked about Planning Commission appointments with Carmen Montano or others. She noted there was nothing on the agenda about current Commission appointments, the second part of the agenda item.

Mayor Esteves responded for the record that he had not talked to Carmen Montano about Planning Commission appointment, even though she had left him a voicemail message. He remarked, regarding removing someone from a Commission, that there was no consideration for an appointment at the same time since a notice would need to be posted first.

Councilmember Giordano motioned to remove Item No. 8 and direct the City Attorney to do an investigation, and Vice Mayor McHugh seconded it for discussion.

Vice Mayor McHugh had received an e-mail from Ms. Montano about her desire to be appointed to the Planning Commission, and she wrote that the Mayor supported her - which seemed inappropriate to him. Mayor Esteves said any vacancy would have to be posted for a period of time, for 10 days.

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

Motion failed by a vote of: AYES: 2 (Giordano, McHugh)
NOES: 3

Motion: to approve the agenda as submitted, with moving Items No. 12 and No. 13 on consent to be heard after Item No. 2

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

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

City Manager Williams brought to the City Council's attention the revised document to the Santa Clara Valley Transportation Authority for Item No. 25, regarding amendment to the master agreement between the City and VTA (distributed in a purple folder on the dais).

CONSENT CALENDAR

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

Vice Mayor McHugh inquired of the Sister Cities Commission Chair Dennis Grilli (in audience) if he desired items removed from the consent calendar.

Councilmember Polanski requested to remove Item No. 12 from consent. She also announced that she would vote "no" on Item No. 22, to be consistent with past votes and she only wanted one art project at Alviso Adobe Park.

Councilmember Giordano requested removal of Item No. 27 from consent.

Mayor Esteves asked a question about reserve contingency amount on Item No. 23 (bid award for Alviso Adobe Phase IV project). The City Manager responded it was consistent with the range for these types of projects, from 10% to 18%. He was unable to locate the Public Works Director to respond immediately (who spoke with the Mayor later in the evening) to provide more information. The Mayor said he would just take the item off consent then.

Motion/Second: Councilmember Giordano/Councilmember Polanski

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

* 7. Odor Control Report Received the November 2011 odor report.

* 9. Commission Appointments Approved the following appointments:

Public Art Committee: re-appointed Julie Cherry as an Alliance for the Arts Representative to a term that expires in October 2014.

Recycling and Source Reduction Advisory Commission: re-appointed Kashmir Gill as Alternate No. 1 to a term that expires in October 2013.

Senior Advisory Commission: re-appointed Barbara Ebright to a term that expires in December 2013.

Sister Cities Commission: newly appointed Brenda Su as a student non-voting member to a term that expires in September 2012.

- *11. Donation to Library Accepted the donation gift of \$5,000 to the Milpitas Public Library and the spending plan as recommended by the Library Advisory Commission.
- *13. Sister Cities Update Received the staff report on current Sister Cities to Milpitas from the staff liaison to the Sister Cities Commission.
- *16. Adopt Ordinance No. 38.800 Waived the second reading and adopted Ordinance No. 38.800, changing the zoning of approximately 24 acres located along Montague Expressway and Trade Zone Boulevard.
- *17. Resolution Accepting Project Adopted Resolution No. 8143 granting final acceptance of the Park Renovation 2009 "Pathways," Project No. 5089 and release of the contractor's bond.
- *18. Resolution Approving Agreement with Otis Elevator Adopted Resolution No. 8144 authorizing a piggyback agreement with Otis Elevator for the annual not-to-exceed amount of \$6,460 and authorize the City Manager to grant yearly increases pursuant to the contract.
- *19. Resolution Approving New Police Equipment
1. Adopted Resolution No. 8145 standardizing Motorola XPR6550 Radios for the Police Department
 2. Awarded the bid for Motorola XPR6550 Radios and Accessories to Bearcom Sacramento, for the not-to-exceed amount of \$44,268.87.
- *20. Resolution Approving Purchase of Truck
1. Adopted Resolution No. 8146 authorizing the purchase of a Vactor sewer cleaning truck from Maryland Industrial Trucks, Inc. for the not-to-exceed amount of \$304,456 through the use of a cooperative procurement contract.
 2. Approved a budget appropriation of \$25,798 from the Sewer Fund to the Public Works Department.
- *21. Agreement with ABAG Authorized the City Manager to execute an agreement with the Association of Bay Area Governments to acquire and install full trash capture devices through the Bay Area-wide trash capture demonstration project.
- *22. Contracts with Two Artists
1. Authorized City Manager to execute contracts with artist Adrian Litman in the amount not to exceed \$19,360, and with artist Carla Moss in the amount not to exceed \$20,000.
 2. Authorized staff to make administrative amendments as needed to the art agreements to change required installation dates.
- The vote was not unanimous on this item, as Councilmember Polanski announced she voted "No" on these two contracts.
- *24. Agreement with RMC Water and Environment Approved and authorized the City Manager to execute a consultant agreement with RMC Water and Environment in the amount of \$200,000; and, approved a budget appropriation in the amount of \$100,000 from the General Fund into the Engineering budget.
- *25. Amendment to Master Agreement with VTA Authorized the City Manager to execute Amendment No. 2 to the Master Agreement with the Santa Clara Valley Transportation Authority, relating to the Silicon Valley Rapid Transit Program Berryessa BART Extension Project.
- *26. Ranch Dr. Improvement plans Approved Ranch Drive improvement plans; authorized the City Manager to execute the Permittee Dedication and Improvement Agreement and, authorized the City Manager to execute the Stormwater Management Facilities Operation and Maintenance Agreement.
- *28. Amendment to Agreement with Barry Poole Authorized the City Manager to execute Amendment No. 1 to the Recreation Services Agreement with Barry Poole for tennis instruction.

Motion/Second: Mayor Esteves/Vice Mayor McHugh

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

Councilmember Polanski disagreed with the motion on the duration of the visit for flag flying as it should be only for the period of their visit.

3. Report on E-mail Policy

Councilmember Polanski had requested this item on the agenda. She wondered if the City had a policy, and if not, whether one should be developed on the use of the City's e-mail system to non-profit organizations' events.

City Attorney Mike Ogaz reported that there currently was no policy on the distribution of e-mails to City employees from non-profits. The Council could recommend that staff develop one, if desired.

Councilmember Polanski commented that there were lots of good organizations in town. She wanted to know what was the policy on what goes out to all employees, and to find out what policies exist in other cities. She did not want misuse of the e-mail system.

Councilmember Giordano noted that on November 1, an e-mail on the Food Drive partnership was received from a coalition including the Milpitas Fire Department. She asked Councilmember Polanski if that was problematic. Councilmember Polanski replied no. She did not categorize any particular organization or event.

Mayor Esteves asked about Standard Operating Procedure 9-02 which did prohibit some use already and asked why the City Attorney said it did not cover this category of non-profits. The Mayor agreed it should be restricted by the City to business use, and all other uses should not be allowed. He did not want any implied endorsement of the City of Milpitas. There were other objections related to risk, liability, and undue solicitation. He supported a complete ban on non-City events announced via City e-mail.

City Manager Williams asked the Council to provide a specific detailed definition of a "City event."

Councilmember Polanski wanted to direct City staff to inquire what other cities have as a policy on this on mass city e-mails, come back with an SOP on these e-mails, and include City-sponsored events.

Vice Mayor McHugh noted the City could simply have a total ban, and defined City events as those sponsored by the City itself or a City department. He declared that as his motion, and it was seconded by Councilmember Polanski.

Councilmember Giordano asked the Mayor and Vice Mayor about the ban. She inquired about the Gene Schwab employee event, one that was sponsored by the Milpitas Rotary Club. Mayor Esteves confirmed it was not a City event, similar to Knights of Columbus event for police officer and firefighter of the year.

Mr. Williams inquired whether the City Council would include employee union events as City sponsored events. Vice Mayor McHugh responded that the union would have to sponsor the event.

Motion: to direct staff to prepare a policy of a total ban on e-mails sent from non-profit organizations, unless they were sponsored by the City or a City department

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

Motion/Second: Mayor Esteves/Councilmember Polanski

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

Mayor Esteves wanted to end the meeting at this point, but Councilmember Giordano wished to discuss and hear from the Mayor on “Consider Current Planning Commission Appointments” as noted on the agenda item title. The Mayor had no recommendation.

Councilmember Polanski moved to adjourn the meeting.

Mayor Esteves gavelled to try to adjourn the meeting. However, City Attorney Ogaz advised that since a motion was made, the Council should vote to adjourn.

Again, Councilmember Giordano reiterated that she wanted to speak to the second part of the last agenda item, as the title described, including the vacancy that was just created this evening.

Councilmember Gomez seconded the motion to adjourn the meeting at 11:23 PM.

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

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 10:37 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 November 1, 2011

Motion/Second: Agency/Councilmember Polanski/ Agency/Councilmember McHugh

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

Mayor Esteves wanted to remove Item No. RA5 from consent calendar, but there was no consensus on his request.

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

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

RA4. Comprehensive Annual Financial Report (Audit) Finance Director Emma Karlen introduced Ms. Amy Meyer, from the external auditor firm Maze & Associates, who presented findings of the annual audit for FY 2010-11.

Ms. Meyer explained that her company audited the City, the Redevelopment Agency, Transportation Development Act programs, the single audit of all federal grant award programs, and the newly formed Economic Development Corporation. Milpitas had received an unqualified or “clean” audit opinion, the highest level of assurance.

The auditor mentioned there were two modification items to note: (1) an emphasis on

state's proposal for Redevelopment Agency dissolutions as a significant event, and (2) implementation of the GASB No. 54 on presentation of fund balance components.

Ms. Meyer responded to several questions from Mayor Esteves regarding internal controls, previous year's findings, the report dated September 30, and if there were any topics not covered in the audit.

Motion: to accept the City's Comprehensive Annual Financial Report, the Redevelopment Agency Component Unit Financial Statements, and other related annual audited reports for the fiscal year ended June 30, 2011

Motion/Second: Agency/Councilmember Gomez / Agency/Councilmember McHugh

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

- *RA5. Annual Report Accepted the Milpitas Redevelopment Agency Fiscal Year 2010-11 Annual Report.
- *RA6. Resolution Accepting Project Adopted Joint Resolution No. RA 426/ 8142 granting final acceptance of the Barbara Lee Senior Center, Project No. 8176 and releasing the contractor's bond.
- *RA7. Approve Steps for Project No. 8182 Approved the plans and specifications for Project No. 8182, and conditionally authorized advertisement for bid proposals.
- *RA8. Approve Steps for Project No. 8204 Approved the plans and specifications for the Redevelopment Area concrete sidewalk, driveway, and median repairs for Project No. 8204; and, conditionally authorized advertisement for bid proposals.
- *RA9. Approve Steps for Project No. 8204 Approved the plans and specifications for the Redevelopment Pavement Reconstruction Project No. 8204, and conditionally authorized advertisement for bid proposals.

RA 10. ADJOURNMENT Chair/Mayor Esteves adjourned the Redevelopment Agency meeting at 10:50 PM.

REPORTS OF MAYOR AND COUNCIL

- 10. IAFF Dental Fund This matter was not heard.
- 12. Figline Valdarno, Italy Councilmember Polanski had removed this item from consent. She did not object to a new Sister City. With a recommended annual budget of \$2,600 however, and while some Commissions have no budget or less funds in budget, she wanted to be fair and equitable for all on the budget.

City Manager Williams commented that the City Council could consider the actual dollar amount at budget time.

Motion: to accept the new Sister City of Figline Valdarno, Italy

Motion/Second: Councilmember Polanski/Vice Mayor McHugh

Councilmember Giordano planned to vote no on the motion, as the Commission needed to plan to get things done right. Mayor Esteves also would vote no, and wanted more countries. He felt \$2,600 budget was small and other sister cities were spending a lot more at their end.

Councilmember Polanski was trying to do her due diligence, was not sure what the funds were for (and noted that staff member was out ill who might explain).

Vice Mayor McHugh supported the Mayor and he would vote no, because he did not want a partial vote, but rather a complete vote on the motion as recommended originally.

(1) Motion: to accept the new Sister City (with no budget yet)

Motion/Second: Councilmember Polanski/Councilmember Gomez

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

(2) Motion: as the Sister Cities Commission recommended, approve the new Sister City of Figline Valdarno, Italy and include a \$2,600 budget (same as other three Sister Cities) request in the next fiscal year's budget

Motion/Second: Councilmember

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

NEW BUSINESS

Items No. 14. and No. 15 were not heard.

- 14. Review Parks Master Plan
- 15. Security Records

ORDINANCE

One ordinance was adopted on the consent calendar.

RESOLUTIONS

Four resolutions were adopted on the consent calendar.

CONTRACTS

Seven items were approved on the consent calendar.

- 23. Alviso Adobe Renovation
- 27. City Manager's Contract

Items No. 23 and No. 27 were removed from consent, but not heard at the meeting.

ADJOURNMENT

Mayor Esteves adjourned the City Council meeting at 11:23 PM.

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