

**MEETING MINUTES
CITY OF MILPITAS**

Minutes of: Regular Meeting of Milpitas City Council
Date: Tuesday, January 3, 2012
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, Gomez and Polanski

ABSENT: None

CLOSED SESSION

City Council convened in Closed Session to discuss labor negotiations with Mid-Management/Confidential employees group, and the performance review of the City Attorney.

City Council then convened in Open Session at 7:04 PM.

ANNOUNCEMENT

No announcement out of Closed Session.

PLEDGE

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

INVOCATION

None. Councilmember Polanski offered a Happy New Year to all.

MINUTES

Motion: to approve City Council meeting minutes of December 5, 2011, as submitted

Motion/Second: Councilmember Gomez/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 January 2012, as amended

City Manager Tom Williams noted there would be a Special City Council meeting scheduled the next night on Wednesday, January 4, 2012 at 6:00 PM.

Vice Mayor McHugh announced a meeting on January 4 at 7:30 AM at Valley Transportation Authority offices in San Jose for the new cities grouping of Milpitas along with Santa Clara and Sunnyvale.

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

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

PRESENTATION

Mayor Esteves presented a proclamation in support of *1,000 Hearts for 1,000 Minds* to Natasha Tavora Baker from the organization, which sought to match adult volunteer mentors with children in the public schools in Silicon Valley.

PUBLIC FORUM

Robert Marini, Milpitas resident, complained about a computer printer problem at the Senior Center, and the need to have it repaired.

ANNOUNCEMENTS

Mayor Esteves noted from now on that the City Clerk would implement the section of the Open Government ordinance which limits Councilmembers to three minutes’ speaking time during the “Announcements” section of the agenda. He also requested to adjourn this meeting in memory of three community residents: Michael Greer, Annette Davide, and Oscar Necesito.

Councilmember Giordano commented on a recent article in the San Jose newspaper about BART coming to San Jose and stating that Milpitas was part of Silicon Valley. She inquired about resolution of transportation issues relative to a recent letter to the Mayor of Santa Clara. City Manager Williams replied there was no follow-up required.

ANNOUNCEMENT OF CONFLICT OF INTEREST

Councilmember Giordano said she had a conflict on agenda item no. 4 regarding security records, and she would recuse herself from the dais for that matter.

APPROVAL OF AGENDA

Motion: to approve the agenda, as amended

City Attorney Ogaz requested to remove agenda item No. 4 (Giordano v. City of Milpitas) since the subject was now a matter of litigation.

Councilmember Giordano requested to remove agenda item No. 9 (report on ad costs in local newspaper) from the agenda and she would re-agendize it at a future meeting.

Councilmember Gomez requested to remove Item No. 10 (Giordano request to Mayor for copy of a letter) from the agenda, and be dropped.

Motion: to approve the agenda, removing Items No. 4, 9 and 10

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

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

CONSENT CALENDAR

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

Councilmember Giordano requested to remove Item No. 8 (Commission appointments) for discussion.

Councilmember Gomez requested to add Item No. 7 (Planning Commission appointments) onto the Consent Calendar.

Mayor Esteves requested to remove Item No. 14 (Newby Island landfill project) for a staff report since that should be brought to the awareness of residents. He announced that on Item No. 16 he would vote no (Resolution to approve MPOA side letter).

Vice Mayor McHugh requested that Item No. 7 remain on the discussion agenda, which Council member Giordano wanted also.

(1) Motion: first, to place only Item No. 7 (Planning Commission appointments) onto consent

Motion/Second: Councilmember Gomez/Councilmember Polanski

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

(2) Motion: approve the consent calendar with removal of Items No. 8 and 14 from consent

Mayor Esteves stated he voted no on Item No. 16 (MPOA side letter).

Vice Mayor McHugh stated he voted no on Item No. 7 (Planning Commission appointments).

Motion/Second: Councilmember Gomez/Councilmember Polanski

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

- *5. Bid for Project No. 5055 Adopted Resolution No. 7147 rejecting the bid from Best Contracting, awarding the construction contract for the Alviso Adobe Renovation Phase IV to AJF/BHM A Joint Venture, and granting change order authority to staff.
- * 6. December Odor Report Received the December 2011 odor report.
- *7. Planning Commission Appointments To the Planning Commission:
- 1) Newly appointed Rajeev Madnawat to a term that expires in December 2012.
 - 2) Re-appointed Lawrence Ciardella to a term that expires in December 2014.
 - 3) Appointed John Luk to a term that expires in December 2014.
 - 4) Newly appointed Garry Barbadillo as the alternate member to a term that expires in December 2012.
- Vice Mayor McHugh announced his “No” vote on this item.
- *11. Amend RSRAC By-laws Approved amendments to the Recycling and Source Reduction Advisory Commission bylaws, to meet four times per year starting at 6:00 PM.
- *13. Chamber Report Received second quarter report of the Milpitas Chamber of Commerce.
- *16. Adopt Resolution –MPOA Adopted Resolution No. 8149 approving the side letter agreement between the City of Milpitas and the Milpitas Police Officers Association.
- Mayor Esteves announced his “No” vote on this item.
- *17. Adopt Resolution Adopted Resolution No. 8150 declaring weeds on specific properties to be public nuisances, and set the public hearing date for February 7, 2012.
- *18. TW Telecom for internet Authorized the City Manager to execute a five year contract with TW Telecom as the City’s Internet Service Provider for the annual not-to-exceed amount of \$18,732.
- *19. Contract for Outside Counsel Approved a contract for attorney services with the firm of Sheppard Mullin for defense of the City in the *May v. City of Milpitas* lawsuit and authorized execution of the contract and related documents by the City Attorney.
- *20. Bids for Project No. 8198 Approved plans and specifications, and authorized the advertisement for bid proposals for Project No. 8198, parking lot lights at the Milpitas Sport Center Parking Lot featuring LED technology.

UNFINISHED BUSINESS

1. City Manager Contract Councilmember Giordano addressed employees and the audience with her support for City Manager Tom Williams and his work performance, noting her original support when he was initially hired.
- Mayor Esteves stated he supported the City Manager on this contract amendment.
- Councilmember Polanski concurred with remarks by Councilmember Giordano. She provided some history on union employees and various raises granted while the City Manager had none since he was hired.
- Vice Mayor McHugh stated the pay increase was merited based on performance.

Councilmember Gomez commended the City Manager for his performance over the last five years, especially through tough budget years. He did not support the pay raise.

Mayor Esteves was focused on performance. Mr. Williams reported to City Council independent to what the Council believed and was not merely a “yes” man. The Mayor supported the recommendation.

The Mayor next invited comments from the audience.

Ellis Miller, business agent for UPEC union in Redding, CA, represented four employee groups in the City of Milpitas. He was appearing over fairness to employees. He noted employee compensation cuts in the past year and did not support the benefits offered to the City Manager by the City Council.

Steve Bunnell, Milpitas resident and retired employee, referred to back pay and wanted the City Manager to refuse the back pay.

Robert Marini, Milpitas resident, referred to the total compensation printed in the local newspaper. He also referred to sewer rates and how they were calculated.

(1) Motion: to change item no. 4 on the draft amendment document, and change it to 3 (from 2.5) years, equivalent to 6% increase

Motion/Second: Councilmember Giordano/Councilmember Polanski

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

(2) Motion: to approve the employee agreement amendment for the City Manager’s continued employment

Motion/Second: Councilmember Giordano/Councilmember Polanski

Motion carried on a vote of: AYES: 4
NOES: 1 (Gomez)

2. IAFF Dental Fund

Councilmember Gomez explained his request on this agenda matter due to issues recently raised regarding how the Firefighters’ dental program was funded and managed. There was City money routinely deposited into the fund, about which he felt responsible for taxpayer funds. Mr. Gomez referred to the audit report performed by Maze & Associates.

City Manager Williams introduced Steve King, the current President of the International Association of Fire Fighters local. Fire Captain Tim Young was in charge of the dental fund for the IAFF. He stated he’d been working to implement recommendations that were given in the independent audit report. There was a Finance Department staff person helping the IAFF Dental Fund Board with keeping records effectively, for example, among other improvements noted.

Vice Mayor commended the fire union, stating it was impressive to see the turnaround. Meanwhile, he and other Councilmembers would prefer a third party administrator for the IAFF dental fund.

Mayor Esteves asked questions of the firefighters, which Mr. Young answered.

Motion: note receipt of the oral report on the IAFF Dental Fund from Capt. Tim Young

Motion/Second: Councilmember Gomez/Vice Mayor McHugh

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

3. Review Parks Master Plan

This item was heard at 8:48 PM following the Redevelopment Agency meeting.

Parks & Recreation Director Bonnie Greiner reviewed action taken to date on the Parks Master Plan adopted in April 2008. She discussed Capital Improvement Plans related to Parks, as on schedule.

Councilmember Gomez asked about the two soccer clubs in Milpitas, and whether they could both co-exist on same field. Staff replied yes, but not during the same season.

Councilmember Giordano was concerned about soccer fields' use, sought to understand the Sports Master Plan (from 2000) relative to the Parks Master Plan (adopted in 2008). Staff provided some of the past history on the two plans. Ms. Giordano stated her view of the need to update the Sports Center Plan, including a look at expansion of the football field to a multi-use field, and the under utilization of "dirt" (playing field space).

City Manager Tom Williams agreed with Councilmember Giordano on combining the two plans. Staff could come back with impact fees and the planned CIPs. He also identified the need for more soccer fields, so he recommended first updating the Sports Center Plan, before adding it into the Parks Master Plan.

Councilmember Polanski referred to the news about the Redevelopment Agency's demise, so some tough decisions needed to be made next few months. The Council would need to consider all city services, not piecemeal, and look at "core" services.

Councilmember Giordano felt this topic would be appropriate at budget time in the later spring. Council could have a discussion at that time with all City budget issues.

Mayor Esteves suggested to review the basic needs for all City parks.

Motion: to note receipt of the staff report, and bring it back at a later time, such as when discussing the next year's budget

Motion/Second: Councilmember Giordano/Councilmember Polanski

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 8:37 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 December 6, 2011

Motion/Second: Agency/Councilmember Gomez / Agency/Councilmember Polanski

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

RA 3. Agenda Approval and Consent Calendar

Motion: to approve the agenda and consent calendar

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

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

RA4. Report on Supreme Court Decision

Mr. Williams introduced the subject, based on the recently announced result of the court case *CRA v. Matosantos*, effectively eliminating all redevelopment agencies in the state of California.

Assistant City Attorney Bryan Otake reviewed some history and the ruling actions of the Supreme Court on the two Assembly Bills adopted last year. The Court's decision would effectively do away with redevelopment agencies, while one bill was ruled as unconstitutional. February 1, 2012 would be the required date of dissolution and successor agency must be identified before that. Successor agencies would deal with two items: the 80% Agency funds for redevelopment activity and 20% funds for affordable housing activity.

The City Council scheduled a special meeting the following date to take action to appoint those successor agencies for the Milpitas Redevelopment Agency.

Motion: to receive the oral report from City Attorney staff

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

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

*RA5. Adopt Resolution

Adopted joint Agency/City Resolution No. RA427 / 8148 granting initial acceptance of, and reducing the performance bond for, the Midtown East Parking Garage Screens, Project No. 8161.

RA 6. ADJOURNMENT

Chair/Mayor Esteves adjourned the Redevelopment Agency meeting at 8:47 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 9:05 PM.

ROLL CALL

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

ABSENT: None

EDC2. Agenda Approval / Consent Calendar

Motion: to approve the agenda and remove the one item from the consent calendar

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

Mayor Esteves had a specific question about project costs Vice Chair McHugh suggested to remove it from consent.

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

EDC3. Authorize Bids for Project No. 9001

Mr. Williams commented on the status and timeliness of the bid for the upgrade of audio visual equipment at City Hall. It was on the list of enforceable obligations as recently turned in to the State of California.

City Engineer Greg Armendariz responded to concerns of the Mayor regarding costs for replacement and update of the audio/visual equipment in the Council Chambers at Milpitas City Hall. There was a technology gap with the more than 10 years old

equipment and other equipment that was failing. Replacing aging infrastructure was important to successful operations.

Motion: to approve plans and specifications, make findings approving the specification of particular equipment brands, and authorize the advertisement for bid proposals for the City Hall audio visual system upgrade, Project No. 9001

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

Councilmember Polanski commented that this was an appropriate expenditure of funds, and had been brought before the Telecommunications Commission.

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

EDC4. ADJOURNMENT

Chair/Mayor Esteves adjourned the Corporation meeting at 9:11 PM.

Council took an announced five minutes break at this point in the meeting.

REPORTS OF OFFICERS AND COMMISSION

8. Commission Appointments Councilmember Giordano requested this item removed from consent calendar. She inquired of the Mayor of the process on how he recommended people for re-appointment. Mayor Esteves explained that he spoke personally to each Commissioner who requested to be re-appointed, before he put a recommendation on the Council agenda.

Motion: to approve the following appointments

To the Senior Advisory Commission:

Re-appoint Bernice Wrinkle to a term that expires in December 2013.

Re-appoint Mary Banick to a term that expires in December 2013.

Re-appoint Estrella Gilana to a term that expires in December 2013.

To the Telecommunications Commission:

Re-appoint Hai Tran to a term that expires in January 2014.

Re-appoint Sukhi Singh as Alternate No. 2 to a term that expires in January 2014.

Motion/Second: Councilmember Giordano/Councilmember Polanski

Vice Mayor McHugh announced his support for the Senior Advisory Commission re-appointments for the group that he served as Council liaison.

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

9. Ad Costs Item was removed from the agenda.

10. Request of Councilmember Item was removed from the agenda.

NEW BUSINESS

12. Report from City Clerk City Clerk Mary Lavelle reported to the City Council the results of the certification of a voter petition for a ballot measure on a referendum on the campaign finance ordinance adopted by the City Council last October. 3,190 signatures were found sufficient, which was more than enough to qualify the referendum petition.

Councilmembers asked about the process explained by the City Clerk, and several legal points provided by City Attorney Ogaz. If the ordinance was repealed at this meeting, Mr. Ogaz said Council could not consider adopting a similar ordinance for at least one year.

Councilmember Polanski commented that the Campaign Finance Task Force could meet on the issue, including the question of whether another ordinance could be considered by voters, and return to City Council with its recommendation.

Mayor Esteves invited speakers from the audience.

Ed Riffle, Grand Teton Drive resident, remarked about the lack of action by City Council to seek the opinion of a Constitutional expert on the ordinance. He urged Council to rescind the ordinance and avoid an expensive election. Mr. Riffle said if the referendum should fail, there would be a court challenge.

Mayvid McLay, Milpitas resident, read aloud part of a letter from John Eastman of the Claremont Institute Center for Constitutional Jurisprudence.

Brian Bore, Calle Oriente resident, read the remaining portion of Mr. Eastman's letter.

Bobby Lopez, of the Silicon Valley Fraternal Order of Police, resident of Discovery Bay, was concerned about the ability to stifle communication between the people and elected officials, based on the adopted ordinance.

Bill Ferguson, Rivera St. resident, discussed what started this ordinance. There were companies that made multiple contributions to elected officials in Milpitas in the past. He urged keeping the aggregation rule in the adopted ordinance intact to avoid what had occurred, to keep corporations from buying political favor.

Ajay Tallam, Chad Drive resident, was confused about what previous speakers had said and why they were opposed to the ordinance. What people said, when signatures were gathered, misrepresented what the purpose of the campaign finance rules were.

Councilmember Gomez appreciated what the last speaker said. He had a question for the Police Chief, asking if the Fraternal Order of the Police represented the Milpitas Police officers and Chief Graham said no.

Councilmember Giordano was concerned about the signature gathering process. She questioned the City Clerk, who replied on the correct form of the petition only. She asked the City Attorney to address some of the issues raised in the letter Council had received from the Claremont Institute and Mr. Ogaz agreed he could do that.

So, following much discussion, regarding the petition for a referendum ballot measure on Ordinance No. 243.4, Councilmember Polanski recommended action which turned into the motion below.

Motion: 1) to receive the City Clerk's report and certification of the petition signatures, and 2) to schedule a special meeting of the Milpitas City Council on Thursday, January 12, 2012 at 6:00 PM to hear the recommendation of the Campaign Finance Task Force on the referendum, and to consider whether a new campaign finance ordinance by ballot measure could be brought before the voters by the City Council

Motion/Second: Councilmember Polanski/Vice Mayor McHugh

Councilmember Giordano wanted to vote to repeal the adopted ordinance, and so she would vote no on this motion. She quoted some of the issues raised in a letter sent to Councilmembers from the Claremont Institute.

Vice Mayor McHugh saw no harm in continuing this matter, and having the Task Force come back to the City Council. He asked a parliamentary question to the City Attorney, when a Councilmember calls for the question. Usually, that meant the Council should vote, Mr. Ogaz replied while, at the same time, the Council was self-governing.

Mayor Esteves stated he would support the motion. He was disappointed to hear from residents as to interactions with the signature gatherers, who may not have explained the ordinance clearly. He was favorable to amending the campaign finance regulations.

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

14. Newby Island Landfill

Mayor Esteves had one question for staff on this topic. He asked about a point made by the City Manager in his letter to City of San Jose about odor control and plans for future mitigation of odor at the landfill. Utility Engineer Kathleen Phalen explained the regional odor monitoring mitigation program, lead by City of San Jose staff at the Water Pollution Control Plant.

Motion: to receive informational report on the Newby Island landfill expansion project

Motion/Second: Councilmember Polanski/Mayor Esteves

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

ORDINANCE

15. Introduce Ordinance No. 260.1

City Attorney Ogaz reviewed the rationale for bringing this ordinance to the Council, per its previous direction to amend the flag flying rules in Milpitas as requested by the Sister Cities Commission.

Vice Mayor McHugh wanted to add a modification, changing 45 days to 30 days for the time frame to submit a request for flag flying to City staff.

City Attorney Ogaz read aloud the title of the proposed ordinance, related to amending regulations on flag flying, and responded he could incorporate the change requested.

(1) Motion: to waive the first reading of Ordinance No. 260.1

Motion/Second: Councilmember Gomez/Vice Mayor McHugh

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

(2) Motion: to introduce Ordinance No. 260.1, as amended with 30 days rather than the current 45 day period to seek Council approval of flag flying application

Motion/Second: Councilmember Gomez/Councilmember Giordano

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

RESOLUTIONS

Two resolutions were adopted on the consent calendar.

BID AND CONTRACTS

Three items were approved on the consent calendar.

ADJOURNMENT

Mayor Esteves adjourned the City Council meeting at 10:38 PM in memory of Michael Greer, Annette Davide, and Oscar Necesito, 3 community residents who'd passed away.

The foregoing minutes were approved by the Milpitas City Council as submitted on January 17, 2012.


Mary Lavelle, City Clerk