

**MEETING MINUTES  
CITY OF MILPITAS**

**Minutes of:** Regular Meeting of Milpitas City Council  
**Date:** Tuesday, February 7, 2012  
**Time:** 6:00 PM  
**Location:** Council Chambers, Milpitas City Hall,  
455 East Calaveras Blvd., Milpitas

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**ROLL CALL**

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

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

**ABSENT:** None

**CLOSED SESSION**

City Council convened in Closed Session to discuss existing litigation, *Giordano v. City of Milpitas*. Economic Development Corporation convened to discuss real property negotiation.

City Council then convened in Open Session at 7:00 PM.

**ANNOUNCEMENT**

No announcement out of Closed Session was made.

**PLEDGE**

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

**INVOCATION**

Councilmember Giordano asked to adjourn the meeting in memory of Robert McGuire, the recently deceased former Director of Milpitas Parks & Recreation, and active Rotary Club member. She offered words in his memory, honoring the elderly in particular.

**MINUTES**

Motion: to approve City Council meeting minutes of January 12, 17 and 23, 2012

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 February 2012, as submitted

Motion/Second: Councilmember Polanski/Councilmember Giordano

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

**PRESENTATIONS**

Mayor Esteves proclaimed Martin Luther King Jr. Day. He also proclaimed *Black History Month* for the month of February 2012 in the City of Milpitas. Both proclamations were accepted by Ms. Demetress Morris, member of Flamekeepers founders and President of Milpitas Black Caucus.

**PUBLIC FORUM**

Rob Means, 1421 Yellowstone Ave. Milpitas resident, showed a portion of a video which displayed the Personal Rapid Transit system.

Robert Marini, Milpitas resident, discussed revenue program guidelines provided by City staff. He pointed to reduced rates for utilities and asked about water meter reading and the formula for multi-family units.

Linda Windisch, Lacey Drive, Milpitas resident, addressed the issue of marijuana dispensaries in the City of Milpitas. She felt there were many other choices available to citizens to generate revenue and was opposed to marijuana clubs in Milpitas.

Gary Roope, Mente Linda Loop resident, appreciated when a wrong was righted, for example the expansion of the Walmart store. He discussed pensions of the City Councilmembers and read aloud a letter he had published recently in the local newspaper.

Mayor Esteves asked for a response from the City Manager. The Mayor said he would not receive any PERS pension benefit from City of Milpitas.

Dan Manassau, Milpitas resident, read aloud from a portion of the Transit Area Specific Plan, regarding developer fees toward adequate schools.

City Manager Williams noted there would be a joint meeting of the City Council and the School District Board on Thursday, where the resident might want to attend. He also identified that schools collected the fees from the developers, not the City.

Councilmember Polanski repeated that the schools collected the fees and issued a report every year on how funds were spent.

Robert Windisch, 2141 Lacey Drive, Milpitas resident, expressed his displeasure of all the City Councilmembers and their actions.

#### **ANNOUNCEMENTS**

Councilmember Giordano announced that the Veterans Commission sought applications for Veteran of the Year.

Mayor Esteves announced that the Knights of Columbus sponsored Citizen of the Year, and sought nominations from the community. Lou Horyza was the person in charge of that event.

#### **ANNOUNCEMENT OF CONFLICT OF INTEREST**

City Attorney Ogaz noted that Councilmember Giordano had reported her conflict of interest on the Court case discussed in Closed Session, and thus she excused herself from the item.

#### **APPROVAL OF AGENDA**

Motion: to approve the agenda, as submitted

Motion/Second: Councilmember Polanski/Councilmember Giordano

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

#### **CONSENT CALENDAR**

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

Councilmember Giordano stated on Item No. 12, the campaign finance ordinance, she would vote "No" to be consistent with past votes on this subject.

Motion/Second: Councilmember Polanski/Vice Mayor McHugh

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

\* 3. Odor Report

Received the January 2012 odor report.

\* 4. Subcommittee Change

Approved the Mayor's request to assign Capital Improvement Program discussion to the Finance Subcommittee (from Neighborhood Services and Education Subcommittee).

\* 5. Appointments to 3 City Commissions

Community Advisory Commission  
Newly appointed Mayvid Maclay as Alternate No. 3 to a term that expires in January 2014.

Economic Development Commission

Appointed Chandru Bhambhra as a regular member representing residential real estate to a term that expires in April 2012.

Appointed Preeti Suri as a regular member representing retail to a term that expires in April 2012.

Appointed Sumeet Ahuja as Alternate No. 1 to a term that expires in April 2013.

Parks, Recreation and Cultural Resources Commission

Newly appointed Evelyn Ramirez as Alternate No. 1 to a term that expires in June 2012.

Newly appointed Gerome Guerrero as Alternate No. 2 to a term that expires in June 2013.

- \* 9. Mid-Year Budget Adjustments      Approved the Fiscal Year 2011-12 mid-year budget appropriations, as itemized on the budget change forms.
- \*10. Investment Portfolio Status      Received the investment report for the quarter ended December 31, 2011.
- \*12. Adopt Ordinance No. 243.6      Waived the second reading and adopted Ordinance No. 243.6 regulating campaign contributions.
- Vote was not unanimous, as Councilmember Giordano voted “No” on this ordinance.
- \*13. Resolution Regarding LAIF      Adopted Resolution No. 8156 of the City of Milpitas as a successor agency of the Milpitas Redevelopment Agency authorizing investment of monies in the Local Agency Investment Fund.
- \*14. Resolution Approving New MOU      Adopted Resolution No. 8157 approving the Memorandum of Understanding between the City of Milpitas and the Mid-Management Confidential Unit of employees, for the period January 1, 2012 through December 31, 2012.
- \*15. Resolution Granting Final Acceptance, Project 8196      Adopt Resolution No. 8158 granting final acceptance of the Soundwall Renovation, Project No. 8196 and release the contractor’s bond.
- \*16. Resolution Granting Final Acceptance, Project 8198      Adopted Resolution No. 8159 granting final acceptance of the Department of Energy Grant Program, Project No. 8198 and release the contractor’s bond.
- \*17. Agreement with Accurate Cleaning      Approved an agreement with Accurate Cleaning Systems for collection, transportation, and recycling or disposable of non-exclusive solid waste.
- \*18. Agreements with Two Universities      Approved two educational agreements with Grand Canyon University and National University both with effective dates of April 1, 2012, for City of Milpitas employees.
- \*19. Award Contract for Fire Station Improvements      Rejected all bids submitted for Project No. 3403 and awarded a construction contract to Environmental Systems Inc. for Fire Station Improvements “Re-plumbing Fire Station 3,” Project No. 3403, in the amount of \$78,417.
- \*20. Amendment to Agreement with Schaaf & Wheeler      Approved a budget appropriation in the amount of \$50,000, and authorized the City Manager to execute Amendment No. 1 to the consultant agreement with Schaaf & Wheeler for Storm Drain Documentation Review.

**PUBLIC HEARING**

1. Weed Abatement      Fire Marshal Albert Zamora explained actions taken to date for the weed abatement program, including the resolution adopted last month. This evening was the opportunity to hear from any property owners who might object to clearing of weeds on their properties. Also Mr. Moe Kumre of the County of Santa Clara Agriculture office was present to answer questions about the program.

Next, the Mayor opened the public hearing and heard no testimony.

(1) Motion: to close the public hearing

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

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

(2) Motion: to adopt Resolution No. 8154 directing the Santa Clara County Agricultural Commissioner to abate the weeds nuisance, keep account of the cost, and embody such account in a report and assessment list to the City Council, in accordance with Milpitas Municipal Code

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

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

## 2. Moratorium on Certain Land Uses – ordinances

Planning Director Diana Barnhart explained the proposed land use moratorium, per the recommendation of the Council's Transportation and Land Use Subcommittee. Long term impacts of unanticipated residential conversions were to be considered, and thus arose the recommendation for the zoning moratorium on changing industrial land and commercial space to residential use. She identified two projects which would come before the City Council for possible re-zone this year.

Councilmember Gomez asked about additional projects upcoming and the number of housing units. He inquired whether the moratorium would sunset after six months.

Vice Mayor McHugh inquired about analysis of locations where re-zones were likely to be requested, and could more be accomplished without the ordinance.

Councilmember Giordano referred to the meetings of the Subcommittee, her experience as a Planning Commissioner, the hillside ordinance, changes in the sign ordinance, and other community efforts with input from the public. She would like to hear from the Planning Commission on this issue.

City Manager Williams responded to Ms. Giordano, on the parameters for developers that could be set, and could include a meeting with stakeholders.

Councilmember Polanski referred to the Council structure for subcommittees, which only started a few years ago. In the past, the full City Council discussed all issues, and that was a more open and transparent process.

Mayor Esteves had been waiting for this ordinance for some time and it had not been rushed. He wanted the City to show its respect for comments received from the School District, that it was not ready for more homes at this time.

Next, the Mayor opened the public hearing.

Chrisand Giles, Executive Director of the BIA of the Bay Area, expressed the word "moratorium" had a stigma in the building industry, and businesses did not want residential built next to them. Other ways existed to achieve goals of the draft ordinance.

Rob Means, 1421 Yellowstone Ave resident, referred to the City's General Plan to guide the decisions for development proposals. He noted the City Council was the body which decided zone changes and he wanted Council to simply stick with General Plan rules.

Don Peoples, Spring Creek Lane resident, felt that six months' "time out" was needed, to stop and review what was occurring with development in the City. Industrial land use in

Milpitas had not changed much in 30 years, with Floor Area Ratios and densities and other factors he discussed. Proper and best use for development must be determined.

Robert Marini, Milpitas resident, complained about too much traffic and back up on Dixon Landing Road. Increasing the number of residents would add to traffic.

(1) Motion: to close the public hearing

Motion/Second: Councilmember Giordano/Councilmember Gomez

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

Vice Mayor McHugh learned about this proposal over the weekend, when he reviewed his agenda packet. He felt there should be more publicity. He would be supportive of the moratorium, though with some reservation.

Mayor Esteves noted the Fairfield Residential development as a recent example of a re-zone, from industrial to residential development. It restricted the addition of more jobs by that change, and job zones instead were needed. He expressed his strong support in favor of a moratorium.

City Attorney Ogaz read aloud the title of the Urgency Ordinance.

(2) Motion: to waive the reading beyond the title and adopt Urgency Ordinance 38.801 to establish a moratorium on conversions of certain industrial and/or commercial zones to residential zones

Motion/Second: Councilmember Polanski/Vice Mayor McHugh

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

(3) Motion: to adopt Urgency Ordinance No. 38.801

A 4/5 vote was required for successful adoption.

Motion/Second: Councilmember Polanski/Vice Mayor McHugh

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

City Attorney Ogaz read aloud the title of Ordinance No. 38.802, "An Uncodified Interim Ordinance of the City Council of the City of Milpitas Establishing a Temporary Moratorium on the Acceptance, Processing and Approval of Applications for Conversions of Certain Industrial and/or Commercial Zones to Residential Zones."

(4) Motion: to waive the first reading beyond the title of Ordinance No. 38.802

Motion/Second: Councilmember Polanski/Vice Mayor McHugh

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

(5) Motion: to introduce Ordinance No. 38.802

A 4/5 vote was required for successful adoption.

Motion/Second: Councilmember Polanski/Vice Mayor McHugh

Motion carried by a vote of:

AYES: 4

NOES: 1 (Giordano)

**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 8:46 PM.

**EDC2. ROLL CALL** **PRESENT:** Chair/Mayor Esteves, Vice Chair/Vice Mayor McHugh and Agency/ Authority/Councilmembers Gomez, Giordano, and Polanski

**ABSENT:** None

**EDC3. Agenda Approval and Consent Calendar** Motion: to approve the agenda and consent calendar, as amended

City Manager Williams requested to remove No. EDC5 from consent.

Motion/Second: Councilmember Giordano/Councilmember Polanski

Motion carried by a vote of:

AYES: 5

NOES: 0

**EDC4. Authorize Purchase of Land Parcels on S. Main Street** Planning Director Diana Barnhart explained why the land purchase was needed in the Transit Area. She defined the financial value of the properties (\$4.2 million) intended for South Main Senior Lifestyles development. An amended Disposition and Development Agreement would later follow for the project if the recommended land purchase was approved at this meeting.

Mayor Esteves invited speakers from audience.

Dan Manassau, Milpitas resident, discussed property value assessment. He compared it to other land that was purchased by the City in the same vicinity.

City Manager Williams responded to the public speaker. This was the last remaining parcel to consolidate land in the MidTown Plan development area. What action would have been accomplished by the Redevelopment Agency in the past would now be done by the EDC.

Robert Marini, Milpitas resident, asked when citizens would get their money back. Staff responded that would be negotiated with the developer when sold.

Motion: to authorize the Corporation President to execute a contract to purchase property located at 1452-1466 and 1474 South Main Street, Assessor Parcel Numbers 86-22-029 and -030, totaling 1.65 acres for \$4.2 million

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

Motion carried by a vote of:

AYES: 5

NOES: 0

**EDC5. Contract for Public Opinion Survey of Milpitas Voters** City Manager Williams expressed the need for a public opinion survey in advance of potentially determining whether to pursue a ballot measure for revenues on the June 5, 2012 ballot.

Vice Mayor McHugh wanted the survey to include the impact of a City measure being on the same ballot as one for the school district, which had a general obligation bond measure on the June ballot.

Councilmembers asked a variety of questions about the survey related to minority languages, targeted number of respondents, past survey of voters, surveys in San Jose, types of taxes, and comment from the two proposed vendors.

Mr. Manross from Strategy Research Institute responded to questions from Council member Giordano, primarily about language needs for minority language speakers.

Motion: to authorize the EDC President to execute a contract not to exceed \$65,000 for consulting services to perform a public opinion survey of City of Milpitas registered voters and funding options strategy for a potential June 5, 2012 ballot measure with the firm of Fairbank Maslin along with Saggau & DeRollo

Motion/Second: Councilmember Gomez/Councilmember Polanski

Mayor Esteves was not in favor of this work until there was more “tightening of the belt.”

Councilmember Giordano wanted the City Manager’s recommendation on splitting the work between two firms.

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

City Council took a break and left the dais at 9:30 PM.

## **EDC6. ADJOURNMENT**

Chair/Mayor Esteves adjourned the Corporation/Council meeting at 9:41 PM.

## **REPORTS OF MAYOR**

After the break, Mayor Esteves reported that the Council would discuss Items No. 11, No. 7 and No. 8 in that order.

### **6. Mayor’s Recommendation for new Oversight Board**

Mayor Esteves explained the need for the City to appoint representatives to the newly forming Oversight Board, which would oversee the Redevelopment Agency successor agencies’ actions.

Councilmember Gomez volunteered to serve as the City’s elected representative to the new Board. Also, Finance staff was recommended to serve on the Board.

Motion: move to appoint City Finance Director Emma Karlen, with Jane Corpus Takashi as staff alternate, to the Oversight Board for the wind down of the former Milpitas Redevelopment Agency, and appoint Councilmember Gomez as the Council representative

Motion/Second: Councilmember Polanski/Vice Mayor McHugh

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

## **NEW BUSINESS**

Two items were approved on consent.

### **7. Financial Status Report as of December 31, 2011**

Finance Director Emma Karlen provided financial data, expressing the current status of the City’s finances. Staff sought direction from City Council on a possible date for a Budget Study Session in March. Later in the year, April 17 was scheduled for a presentation on the draft CIP and May 8 would be the budget hearing.

Mayor Esteves asked his colleagues about Tuesday, March 6 (regular City Council meeting date) or Thursday, March 8 (Study Session only). Thursday, March 8 was preferred by consensus.

Motion: to note receipt of the status report from the City Finance Director and schedule a Budget Study Session on March 8, 2012

Motion/Second: Councilmember Polanski/Vice Mayor McHugh

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

#### 8. Report from City Manager

City Manager Tom Williams presented information about the financial challenge the City was in, specifically due to the dissolution of the Redevelopment Agency as of February 1. He explained the requirement of payments for enforceable obligations, and those would be reviewed by the new Oversight Board. Mr. Williams gave a proposal to meet the immediate \$2.92 million additional deficit in FY 2011-12. If approved, the plan would be followed by a Phase II of reorganization to manage the \$4.08 million cut in FY 2012-13.

Vice Mayor McHugh wished to delay any action for 30 - 60 days. He recommended a forensic audit to take a look at the budget. He wanted to look at what the reserve policy was for the other 14 cities in Santa Clara County.

Mayor Esteves asked the City Manager, if the action was delayed, how much more in the hole would the City be, and the City Manager replied \$600,000 per month.

Councilmember Gomez inquired about vacant funded employee positions, the number of those and their costs, and further discussed the public safety current obligations.

Councilmember Polanski said the reserves were very important, and City should not go below 15% as required by City policy. Infrastructure needed replacement after more than fifty years as a City and a long term vision was needed.

Councilmember Giordano agreed that the City was in dire need, a fiscal crisis. She noted that the Council negotiated to have all employee contracts expire at end of 2012. She was willing to adopt what the City Manager recommended and wanted a re-vote on the public safety issue of last year, to offer service at a more cost-effective manner.

Mayor Esteves wanted to support the City Manager in his plan and be decisive. The Redevelopment Agency was gone forever. He did not want the City to collapse.

Councilmember Gomez urged that vacant positions in Fire and Police remain vacant.

Vice Mayor McHugh asked if the City Manager wanted Council to authorize the transfer of reserve funds immediately, \$3 million to get through April.

\$65-85000 was estimated to be the cost for a full blown study on contracting out of public safety services. The City Manager responded about existing side letter agreements with police and fire. Mr. Williams reviewed programs that would need to be cut in the new FY budget, for which there would be no more funding including: Rainbow Theatre, 4<sup>th</sup> of July, and Character Counts. Mayor Esteves said he opposed those programs to be cut while Councilmember Giordano was in favor.

Next, Mayor Esteves invited members of the audience to address the City Council.

Steve Smith, Public Works supervisor and long time employee, spoke on behalf of his "family" of City employees in Public Works. He introduced several City employees from that department and asked that the Council not cut their jobs.

Ben Field, of South Bay Labor Council, acknowledged the hole in the budget and loss that Council must deal with. Few emergency calls could be responded to, if experienced employees were laid off. He urged Council to seek alternatives.

Paul Mullett, Public Works employee in Milpitas Employees Association, highlighted that his bargaining unit gave up nearly 15% of its salary in the last year while other groups did



Mayor Esteves remarked that since the formula remained based on the single highest year's salary, not on the last three years' average, he remained opposed to this change for public safety retirement.

(1) Motion: to adopt Resolution No. 8155 to approve an amendment to the Contract between the Board of Administration of California PERS and the Milpitas City Council

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

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

City Attorney Ogaz then read aloud the title of the ordinance, related to amending the City's Agreement with CalPERS on the retirement formula for public safety employees.

(2) Motion: to waive the first reading of Ordinance No. 101.22

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

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

(3) Motion: to introduce Ordinance No. 101.22

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

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

**RESOLUTION**

Four resolutions were adopted on the consent calendar.

**BIDS AND CONTRACTS**

Four actions were approved on the consent calendar.

**ADJOURNMENT**

Mayor Esteves adjourned the City Council meeting at 11:48 PM, in memory of Robert McGuire, former City Parks & Recreation Director, who passed away recently.

**The foregoing minutes were approved by the Milpitas City Council as submitted on February 21, 2012.**

  
Mary Lavelle  
City Clerk