

**MEETING MINUTES  
CITY OF MILPITAS**

**Minutes of:** Regular Meeting of Milpitas City Council  
**Date:** Tuesday, February 21, 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 and Polanski

**ABSENT:** Councilmember Gomez was absent at roll call and arrived at 6:02 PM.

**CLOSED SESSION**

City Council convened in Closed Session to discuss matters of litigation

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

**ANNOUNCEMENT**

City Attorney Ogaz reported in the lawsuit, County of Santa Clara v. City of Milpitas, on a 5-0 unanimous vote, Council voted to approve a stipulation to dismiss the lawsuit.

**PLEDGE**

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

**INVOCATION**

Councilmember Giordano introduced Paul Mayes of Christ Community Church, who gave the invocation prayer.

**MINUTES**

Motion: to approve City Council meeting minutes of February 7, 2012, 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 Calendars/Schedule of Meetings for February and March 2012, as amended

Councilmember Giordano requested to add a meeting she had attended on this date: Santa Clara County Library Joint Powers Authority Finance committee meeting at 11:00 AM.

Motion/Second: Vice Mayor McHugh /Councilmember Giordano

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

**PRESENTATIONS**

Mayor Esteves commended the very first "Artist of the Year" Mr. Bill Hare, a Grammy award winning a cappella music producer. Several members of the Milpitas Arts Commission were present as the Mayor presented the commendation to the musician.

The Mayor proclaimed "Tobacco Use Prevention Month" for the month of February 2012, and it was accepted by two young residents who were members of Milpitas Healthy Campaign and Community Advocate Teens of Today, Veenu King and Christine Tran.

Mayor Esteves proclaimed Friday, February 17, 2012 as Paul Robeson History and Legacy Day, in celebration of the Paul Robeson Exhibit at the Milpitas Public Library during Black History Month. Awards were accepted by Yollett Merrit, actor/singer Tayo Aluko who also sang as Paul Robeson, and Milpitas Librarian Linda Arbaugh.

**PUBLIC FORUM**

Rob Means, 1421 Yellowstone Ave, spoke about climate change.

Elpidio Estioko wanted to speak about Milpitas Library hours but he was instructed to return when Item No. 2 was discussed.

Robert Marini, Milpitas resident, asked questions regarding sewer rates, fees, formulas, and other information requested.

Councilmember Giordano asked the City Manager about standard fees adopted by ordinance. She asked if the formula the resident sought was possibly not available to provide. City Manager Tom Williams replied he and staff had been working with Mr. Marini for a long time, so maybe he could sit down with him and review the formula, and explain how it was calculated, one time.

In response to Mr. Marini, who stated the Mayor had not returned his phone call, Mayor Esteves did not see a need for a meeting with the resident when staff could professionally respond to his questions about sewer rate formulas. Mayor Esteves asked that, after the next meeting (as Mr. Williams noted), that would be the last meeting on this topic with the resident.

**ANNOUNCEMENTS**

Mayor Esteves announced if all recommendations on agenda Item No. 4 were approved, then there would be only one vacancy for a seat on the Arts Commission/Public Art Committee. He thanked residents who came forward to apply to serve on various City Commissions.

**ANNOUNCEMENT OF CONFLICT OF INTEREST**

None.

**APPROVAL OF AGENDA**

Motion: to approve the agenda, amended only in the order of items discussed

Vice Mayor McHugh wanted to change the order to hear Items No. 6, No. 7, No. 9, and No. 2 as the first items of business, prior to No. 1

Motion/Second: Vice Mayor McHugh/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 announced she would vote “No” on Item No. 11 only.

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

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

\* 3. Staff Alternate to Water Commission

Per Mayor’s recommendation, appointed Kathleen Phalen as the staff alternate to the Santa Clara Valley Water Commission.

\* 4. Commission Appointments

Approved the following appointments:

Community Advisory Commission: appointed Eva Ferguson as Alternate No. 4 to a term that expires in January 2014.

Economic Development Commission: appointed Dinna Bayangos as Alternate No. 2 to a term that expires in April 2012.

Telecommunications Commission: appointed Debra Lax as a regular member to a term that expires in January 2013.  
Appointed Sukhi Singh as Alternate No. 1 to a term that expires in January 2013.  
Appointed Thai Pham as Alternate No. 2 to a term that expires in January 2014.

- \* 5. Request from Library Advisory Commission Per LAC recommendation, appropriated \$2,500 to the Library Advisory Commission budget to purchase prizes, event decorations and refreshments for student essay contest.
- \* 8. Economic Development Received the written monthly economic development report from staff.
- \* 11. Adopt Ordinance No. 38.802 Waived the second reading and adopted Ordinance No. 38.802, establishing a moratorium on conversion of certain industrial or commercial zones to residential zones.  
  
Vote was not unanimous, since Councilmember Giordano voted “No” on the ordinance.
- \* 13. Resolution Granting Initial Acceptance Project 4255&4261 Adopted Resolution No. 8161 granting initial acceptance of the Street Resurfacing 2011 and 2012 Ranch Drive, Projects No. 4255 and No. 4261, subject to a one year warranty period and reduction of the faithful performance bond to \$78,325.21.
- \* 14. Coyote Creek Townhomes Approvals Approved and authorized the execution of a Subdivision Improvement Agreement for the Coyote Creek Townhomes residential development project. Approved all of the following: Stormwater Management Facilities Operation and Maintenance Agreement; Final Map (Tract 10087); Encroachment Permit Agreement, Public Improvement Plans 2-1151, and street names for Project No. 2740.
- \* 15. Amendment to Agreement with CDM Smith Authorized the City Manager to execute Amendment No. 2 to the agreement with CDM Smith, Inc. for solid waste program support.
- \* 16. Private Job No. 1145 Authorized the City Manager to execute a Permittee Dedication and Improvement Agreement, approved Stormwater Management Facilities Operation and Maintenance Agreement; and approved Improvement Plan No. 2-1145 for So. Main Street Median Improvements.
- \* 17. Amendment to Agreement with RMC Water Environment Approved a budget appropriation for the not-to-exceed amount of \$233,296 for the RMC Water and Environment Consultant Agreement, Project No. 4265.

## **UNFINISHED BUSINESS**

### **1. Report from PG&E**

PG&E government relations representative Timon Norimoto introduced Todd Hogenson, Director of PSEP Engineering who presented information to the Council on what was done for pipeline safety within the City of Milpitas. PG&E provided written material and a colored map to Councilmembers with an updated presentation. 16 miles of transmission lines existed within the City of Milpitas and were in the process of being tested. Mr. Hogenson explained the use of “smart pigs” to be installed in some of the lines.

Mr. Norimoto announced the next open house for residents in Milpitas was scheduled on Monday, March 12 at Pearl Zanker School. The open house would be a chance for residents in the south end of the city to learn exactly where and how the lines would be tested in those neighborhoods.

Fire Chief Sturdivant reported on a table top emergency exercise that was conducted last fall with PG&E and other responders. The activity was rolled into a later on-the-ground exercise along with PG&E, which was useful including after-action recommendations for improvements.

Mayor Esteves thanked the PG&E representatives for reporting at this meeting. He asked about documentation of all pipelines in Milpitas. The CPUC and NTSB agencies required that to be done.

Mayor Esteves next allowed for speakers from the audience.

Robert Marini, Milpitas resident, asked if all gas lines had auto shut-off valves in Milpitas.

Mr. Hogenson responded that most lines do not, but there were automatic shut-off valves with a program from a computer that could shut off from many locations, allowing for remote computer shut-off capacity.

Rob Means, Milpitas resident, asked what independent agency was auditing the tests that PG&E conducted in the City since he believed it had been a corporate criminal.

PG&E replied that for every one of its hydro-strength tests, an outside firm and a third party contractor came in to monitor the pressure tests and temperature. This technical data was then provided to the City of Milpitas.

Motion: to receive a report from the PG&E representatives and Fire Chief Sturdivant

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

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

## 2. City Manager Budget Report

This item was heard prior to Item No. 1.

City Manager Tom Williams requested that City Council approve his two specific recommendations related to cutting funds for July 4<sup>th</sup> fireworks and library hours. Two actions were intended for necessary reduction of the current FY budget, due to the elimination of the Milpitas Redevelopment Agency. He had contacted the Harvey Rose firm about conducting an audit, as directed by City Council at the last meeting.

Also, the Council had directed to seek financial relief from the Milpitas Police Officers Association and the International Association of Fire Fighters local unions in Milpitas. He presented proposals to both of those groups to not fill current vacancies and hoped to have a response by March 8.

Proposed for budget reduction were fireworks on July 4<sup>th</sup> holiday and funding for Milpitas library hours. On July 4<sup>th</sup>, a community swim event at the Sports Center pool would continue. Mr. Williams explained the library scenario, and the need to cease augmenting funding toward the additional library hours, as had been done for several years. It would be up to the library about how to schedule hours it could continue to fund at a cost of approximately \$34,000/month or \$400,000 annually.

Mayor Esteves asked Mr. Williams to review questions recently posed to the County Librarian Melinda Cervantes, and he responded.

Councilmember Giordano discussed costs for the July 4<sup>th</sup> events and any success at charging participants in the past. If cost recovery was possible, she wished to maintain the fireworks. Regarding the library hours, she remarked that Milpitas was one of the few was that still open seven days per week.

Councilmember Polanski agreed that offering the pool party only on July 4<sup>th</sup> was a good way to go, and more friendly to the environment without burning fireworks. She showed facts overhead on the library hours. Since 2005, the City had been supporting the Library to stay open, making a \$2.8 million subsidy in that time. Also, she reviewed recommendations by the Citizens Budget Task Force in November 2010, stating that a shared sacrifice would be necessary.

Vice Mayor McHugh could do without fireworks on July 4<sup>th</sup>. He asked for comments from the Milpitas Librarian, so Linda Arbaugh came to the podium. She described how her staff would seek to implement library hours if significant funding was cut and it would take about six weeks to implement reduced hours.

Mayor Esteves believed that the increased Transient Occupancy Tax amount was to be used for Library services and that was what people voted for on Measures H & I. He was opposed to reducing any library hours.

Furthermore, the Mayor said \$9.2 million in savings would be realized if all shared the cuts equitably. A fireworks display was something the City could forego for now and was not a necessity. He urged a simple ceremony to honor July 4<sup>th</sup> for the holiday.

Councilmember Giordano mentioned she and the Mayor voted “no” two weeks ago on the budget item presented then. Public safety was 41% of work force and 50% of costs in the City’s budget, so she felt a need to reign in costs for police and fire, and did not see any movement there. She quoted from the report of the Citizens Budget Task Force. She wanted to hear from the City Manager at every meeting on his proposal from two weeks ago, until the Redevelopment Agency deficit was resolved and the Mayor agreed.

Councilmember Gomez asked many questions about police and fire services, and requested information from the City Manager on a wide assortment of topics including the vacant positions and elimination, peak periods of service, apparatus availability, police patrol and investigations as core service, police vacancies, security at Great Mall, cost for Character Counts program, combining police and fire into one Chief of Public Safety, funding from the RDA, crossing guards expense, police officers typing their own reports, and overall for contracting out of any of these services. He asked the City Manager to respond back to him and the City Council.

Next, the Mayor invited speakers from the audience.

Elpidio Estioko, Milpitas resident and Chair of Library Advisory Commission, had a letter from Commissioners, articulating its view opposing any reduction in Library hours at this time. Commissioners urged a “no” vote.

Marie Pham, Commissioner and resident, supported comments from the Mayor about City voters’ support of past ballot measures.

Robert Marini, Milpitas resident, said they were dodging the big issue of top heavy employees who cost too much money. The City needed to reduce pay and benefits of top employees or eliminate positions.

Rob Means, 1421 Yellowstone, believed this problem was the unions’ so the employees should participate and figure out how to solve it. They ought to make decisions to solve it, with outcome based metrics, including core safety services.

Dan Manassau, Milpitas resident, spent a lot of time at the Milpitas library, noting it was mostly empty in the morning so it would not impact many people if the library closed then. He thanked City Council for re-visiting some Citizen Budget Task Force recommendations, which he helped prepare. Employees’ paid days off need to be reviewed.

Paul Mullett, public works employee, asked how City Council would work with unions that did step up, and then with others that did not.

Councilmember Polanski referred to past ballot Measures H & I, adopted by voters, and quoted what funds were to be used for in the advisory vote with a high percent favorable vote. She read aloud the text of the ballot measures the Mayor referred to, which demonstrated the array of services the funding could be allocated to, not solely for Library hours.

Vice Mayor McHugh asked what the increase in Transient Occupancy Tax funds was used for in the last two years. Finance Director Emma Karlen replied that for last few years, those funds were used for Rainbow Theater and for Capital Improvement Projects, such as Fire Station improvements and street maintenance.

Councilmember Giordano referred to information provided by staff in advance of the meeting regarding the amount of General Fund reserves. She noted that the City was in line with other nearby Santa Clara County cities, in terms of the percent of reserves.

Motion: to cancel the July 4, 2012 fireworks celebration (while maintaining the daytime pool event at Sports Center), and cut funding for the additional Library hours to 54 hours total per week effective April 1, 2012 while staying open 7 days per week, and within the next two weeks to work from the document provided by the City Manager two weeks ago (on February 7) toward the goal to cut \$3.2 million from the City's budget

Motion/Second: Councilmember Giordano/Councilmember Polanski

Vice Mayor McHugh had previously wanted to know how the City compared to neighboring cities on reserves amount (percentage) and was thankful to be informed Milpitas was in line with other cities, with the 15% reserve policy.

Councilmember Gomez asked if the motion did include reporting back on various items requested of the City Manager, and other Councilmembers nodded in consent.

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

Mayor Esteves stated his "no" vote was due to the reduced library funding, which he opposed.

## REPORTS OF MAYOR

Three items were approved on consent.

### 6. Telecommunications Master Plan

Councilmember Polanski introduced Chair of the Telecommunications Commission Albert Alcorn, who gave a presentation of the five year master plan. He noted Vice Chair Dinesh Gupta was present. Chair Alcorn provided a verbal report with power point presentation on history and current activity, along with plans for the future of the City's infrastructure, local cable television, telephone and computer services.

Mayor Esteves thanked the Commission for its work. Councilmembers asked the Chairman a variety of information questions, which he and staff Bill Marion were able to respond to.

Councilmember Gomez left the Council Chambers at approximately 8:15 PM.

Motion: to receive an oral report from the Chairman of the Telecommunications Commission and to adopt the 2012 Telecommunications Master Plan

Motion/Second: Councilmember Polanski/Councilmember Giordano

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

Councilmember Gomez returned to the dais at 8:25 PM.

## NEW BUSINESS

One item was approved on consent calendar.

7. Update on Santa Clara County Express Lanes

Santa Clara Valley Transportation Authority staff Jim Lawson introduced VTA staff: engineer Murali Ramanujam, Carolyn Gonot, and Casey Imoto. Mr. Ramanujam discussed the latest express lanes program to be implemented on local freeways, including most recently on Highway 237. Silicon Valley Express Lanes in the commuter lanes were scheduled to open in March on 237. These were denoted with double white lines, and overhead with the equipment for deducting costs from Fastrak in drivers' vehicles.

Mayor Esteves strongly disagreed with the design plan for the 237 express lane. It did not benefit Milpitas residents as designed presently and the City's residents would be inconvenienced when commuting to work in the morning and evenings. He protested the lane design, due to the lack of opportunity to merge into the commuter lane until far into San Jose on 237.

Vice Mayor McHugh also disagreed and had commented on this issue last year. Councilmember Giordano asked the Vice Mayor if he had been asked to vote on this issue at the VTA Board. Mr. McHugh was not a voting member when this plan was approved.

Mayor Esteves asked VTA staff to return to City Council and report back, after working with Caltrans. Vice Mayor McHugh stated he could get data from VTA about the clogging point on 237.

Councilmember Polanski supported the Mayor's remarks.

The Mayor next invited members of the audience to comment.

Steve Bahr, resident and business owner in Milpitas, thanked the Mayor for his passion in opposing the lane design, and agreed many City residents were affected by this change.

Marie Pham, 789 Anacapa Ct., commuted in the commuter lanes on 237 and it was more crowded than ever on this roadway in Milpitas.

Dan Manassau, Milpitas resident, noted there was back up of traffic into Milpitas, as a result of these lane changes.

Donald Irving, Abbott Ave. resident, stated this change impacted him. His family members lived in Livermore, so he drove that route to visit.

Motion: to receive an oral report from staff on the Santa Clara County Express Lanes program, along state route 237

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

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

9. Update on BART project

Next, Santa Clara Valley Transportation Authority (VTA) staff Carolyn Gonot addressed the City Council with an update on the BART Extension to the South Bay.

On Thursday, April 12, 2012 at 10:00 AM, a groundbreaking ceremony was scheduled. A VTA office would open soon here in Milpitas for the expansion project, now that the design –build "C700" contract was awarded to one firm. She discussed the Kato Road grade separation project, and VTA had been working with neighbors in the area. She emphasized the full funding of \$900 million in federal funds that were committed for the BART extension to Silicon Valley.

Motion: to receive a progress report from VTA staff on the BART Extension project of the Santa Clara Valley Transportation Authority

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

Motion carried by a vote of:

AYES: 5

NOES: 0

## ORDINANCES

One ordinance was adopted on consent calendar.

### 10. Ordinance No. 262.7

City Attorney Mike Ogaz explained this topic was brought forward following the results of a court order, with which the City was complying. Regarding public security and safety, adopting the proposed ordinance amendment would allow for use of the balancing test found in the California Public Records Act.

Councilmember Giordano referred to a letter from a citizen who opposed the ordinance. She disagreed with comments by the City Attorney in his written report and then quoted from the judge's final decision. The Rules Subcommittee was the place to discuss changes to the Open Government ordinance and that had not been done.

Mr. Ogaz replied that he was not authorized to disclose information out of the City Council Closed Session, even though he acknowledged a request was made by Councilmember Giordano.

Vice Mayor McHugh was not convinced of the urgency nature of this item. He wanted to compare and contrast the City's open government ordinance compared to the state of California's Public Records Act.

Councilmember Polanski provided history on the ethics program and resulting open government ordinance, resulting in transparency in government since 2005. She commented her response to the recent lawsuit by Councilmember Giordano against the City.

Mayor Esteves stated he was here to serve the public interest, and was agreeable in having the balancing test put into Milpitas law.

Next, the Mayor invited speakers from the audience.

Steve Bahr, a Milpitas resident and business owner, did not have all the facts and was concerned with how fast this was moving. Residents needed to review the change, and he favored open government and transparency. He had submitted a written letter to City Council stating his objection to the proposed ordinance.

Rob Means, 1421 Yellowstone resident, commented on the phrase "security" especially "national security" in these times.

Robert Marini, Milpitas resident, did not understand what the security issue was, with the security video, times coming and going, and the public nature of Councilmembers' jobs.

Councilmember Gomez asked for a clear explanation of the balancing test, which Mr. Ogaz explained. Upon reflection, he felt the balancing test was needed.

City Attorney Ogaz read aloud the title of the proposed urgency ordinance "An Urgency Ordinance of the City Council of the City of Milpitas Amending Municipal Code Section I-3.10-370 to Remove the Barrier to Application of the "Balancing Test" Under the Public Records Act."

(1) Motion: to waive the reading beyond the title of urgency Ordinance No. 262.7

Motion/Second: Councilmember Gomez/Councilmember Polanski

Motion carried by a vote of:

AYES: 5

NOES: 0

(2) Motion: to adopt Ordinance No. 262.7 on an urgency basis to become effective immediately

Motion/Second: Councilmember Polanski/Councilmember Gomez

The City Attorney said a 4/5 vote was required for adoption.

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

(3) Motion: to remove the word “urgency” and then introduce as a regular ordinance for the first reading Ordinance No. 262.7

Motion/Second: Councilmember Gomez/Councilmember Polanski

Councilmember Giordano explained why she would vote “no” and wanted this topic to go first to the subcommittee for more review and discussion.

Vice Mayor McHugh repeated his desire for a compare and contrast of the state Open Records Act and the local ordinance. A balancing test would be helpful.

City Attorney Ogaz stated he would make necessary adjustments to the language in the ordinance, when it would be brought back to Council for a second reading.

The Mayor then called for a vote on the ordinance introduction.

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

Vice Mayor McHugh favored the motion only if he would receive the document (compare and contrast) prior to second reading. City Attorney agreed he could do that.

## **RESOLUTIONS**

One resolution was adopted on the consent calendar.

### **12. Resolution Declaring Fiscal Emergency**

City Manager Tom Williams explained rationale for the request to adopt a statement of fiscal emergency solely for the purpose of then allowing a 50% + 1 vote threshold for a ballot measure, instead of 2/3 vote required on any revenue measure on the ballot. This action was in advance of preparing for any item to go on the June 5 election, pending results of a survey of Milpitas voters that was underway.

Vice Mayor McHugh wanted to learn if a June vote would have any major negative effect on the Milpitas Unified School District measure already scheduled on the ballot. He was not supportive of this action, as a result.

Councilmember Polanski believed the City was in fiscal emergency, and until the City could show people that it had done all possible, to make cuts first and get the fiscal house in order, then she would not vote for a tax ballot measure.

Councilmember Giordano also agreed the City was in a fiscal emergency and she was open minded. She remarked on Citizens Budget Task Force and had spoken to the survey vendor. A utility user tax was one that was suggested, to which she was open minded. However, she would vote no until more actions were taken, as Ms. Polanski suggested.

Vice Mayor McHugh would support the requested action, with concern for the impact on the schools measure on the June 5 ballot.

Mayor Esteves agreed the City was in a fiscal emergency, when people were going to get laid off from the City.

The Mayor then asked for comments from the audience.

Robert Marini, Milpitas resident, commented that the City had already increased sewer tax and any more taxes would be defeated by voters.

**Motion:** to adopt Resolution No. 8160 declaring a fiscal emergency AND to study outsourcing as recommended in the 2010 Citizens Budget Task Force report for all departments, and to bring the results back in the next 3-4 months to use in negotiating the next Memorandums of Understanding with employee unions. Motion included instruction to the City Manager to proceed immediately with no further Council action or interference by Councilmembers and to review the various recommendations.

City Attorney Ogaz stated that a unanimous vote was required for adoption.

Motion/Second: Councilmember Giordano/Councilmember Polanski

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

**CONTRACTS**

Four actions were approved on the consent calendar.

**ADJOURNMENT**

Mayor Esteves adjourned the City Council meeting at 12:20 AM on Wednesday, February 22, 2012.

**The foregoing minutes were approved by the Milpitas City Council as amended on March 6, 2012.**

  
Mary Lavelle  
City Clerk