

**MEETING MINUTES  
CITY OF MILPITAS**

**Minutes of:** Regular Meeting of Milpitas City Council  
**Date:** Tuesday, March 20, 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 labor negotiations with all six employee organizations.

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

**ANNOUNCEMENT**

None.

**PLEDGE**

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

**INVOCATION**

Mayor Esteves offered a prayer for all.

**MINUTES**

Motion: to approve the City Council meeting minutes of March 6, 2012 as submitted

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

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

**SCHEDULE OF MEETINGS**

Motion: to approve the Council Calendars/Schedule of Meetings for March and April 2012, as amended

City Manager Tom Williams noted that the Economic Development Subcommittee was canceled on March 19, and the first meeting of the new redevelopment Oversight Board would be on Monday, March 26 at 5:30 PM at the City Hall Committee Room.

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

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

**PRESENTATION**

Mayor Esteves commended Milpitas Camera Club for its efforts to display photos recognizing the 15<sup>th</sup> Sister City Anniversary with Tsukuba, Japan. The Commendation was accepted by Britta Heise, President of the Camera Club and several Sister Cities Commissioners were present also.

**PUBLIC FORUM**

None.

**ANNOUNCEMENTS**

Councilmember Gomez noted that the City of Milpitas 4<sup>th</sup> of July fireworks ceremony would proceed, thanks to contributions from Allied Waste plus other companies along with participants' donations on that holiday, all together which would be enough to cover the costs.

Vice Mayor McHugh announced the new Chair and Vice Chair of the Milpitas Senior Advisory Commission were Barbara Ebright and Melba Holliday. Also, he said thank s for the opportunity to present the 2<sup>nd</sup> Gertrude Welch Peace and Justice award to student advocates for higher education at the School of Engineering at San Jose State University.

Councilmember Polanski said she was very pleased with businesses that stepped up to the plate (regarding fireworks). She acknowledged Allied Waste, Preston Pipelines, DR Horton, Lyon Homes, Robson Homes and Headway Technology.

Councilmember Giordano asked the City Manager about the Council's vote to eliminate the July 4<sup>th</sup> event and now it would be reinstated. She asked if the City Manager would report back on this issue. Mr. Williams responded that he would provide that as part of the May 8 budget report at the public hearing, with a report on charitable contributions and account of costs.

Mayor Esteves thanked Councilmembers Gomez and Polanski for leading the effort to fundraise for the 4<sup>th</sup> of July celebration. He congratulated the Girl Scouts for celebrating their 100-years anniversary, also the Cathedral of Faith on its one year anniversary. The Relay for Life gave a plaque to the Mayor, thanking the City for support in terms of costs for the annual event. Finally, he announced upcoming events at the Milpitas Library.

**ANNOUNCEMENT OF  
CONFLICT OF INTEREST**

None.

**APPROVAL OF AGENDA**

Motion: to approve the agenda, as submitted

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

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

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

- \* 5. PRCRC Workplan Approved the Parks, Recreation and Cultural Resources Commission 2012 Work Plan.
- \* 7. Resolution Adopted Resolution No. 8166 granting initial acceptance of the North Abel Street Resurfacing 2011, Project No. 4255, subject to a one year warranty period and reduction of the faithful performance bond to \$91,943.74.
- \* 8. Resolution Adopted Resolution No. 8167 granting final acceptance of the Storm Water Pump Stations and Water Tower Improvements (Re-Roofing Project), Project No. 3707, and release of the contractor's bond.
- \* 9. Award Contract Awarded a construction contract to Amland Corporation for the Department of Energy Grant Program, Project No. 5094, in the amount of \$16,440.00.
- \*10. Street Resurfacing Approved plans and specifications for Projects No. 4255 and No. 4261 and authorized the advertisement for bid proposals for the projects.
- \*11. Fire Department RFP Approved the draft Request for Proposals (RFP) for Fire Department outsourcing.

**PUBLIC HEARINGS**

- 1. Appeal of Final Decision by MHPRRB City Attorney Mike Ogaz explained the nature of this unusual public hearing, to decide this matter based on the record before them, on the decision made by the Mobile Home

Park Rental Review Board on a petition for rent increase at the Friendly Village Mobile Home Park. Attorneys were present for the park owner and on behalf of the park residents. It was a narrow scope of review to determine if the Board acted in excess of its jurisdiction and acted in compliance with the law, with no abuse of discretion.

Mayor Esteves announced he would allow ten minutes for lawyers on each side to speak.

First, Mr. Anthony Rodriguez, attorney for the park owner, spoke. He wanted the City of Milpitas, not the park owner, to subsidize the residents for their rent. He stated the decision of the Board was not fair to the owner of the property and there were many court cases pending in the nation on similar type of issues.

Next, Mr. Alan Berger, attorney for the park residents, spoke. He represented 145 home owner spaces at Friendly Village and thanked the members of the Mobile Home Park Rental Review Board for their lengthy time on this matter. He noted the unfairness of the rent increase on most of the residents, and emphasized the fact that the original 1992 ordinance in Milpitas came about from complaints at the very same mobile home park.

Councilmember Giordano asked the City Attorney if the City Council had been through this process, and staff was not aware of any other time it had. She wondered if there was any need to revisit the ordinance. Mr. Ogaz commented that the Board could re-determine the percent of Net Operating Income (NOI), currently 60% of CPI and that it could be adjusted, if appropriate.

Mayor Esteves confirmed that up to 45% increase in the rents was the proposal.

Next, the Mayor opened the public hearing for comments.

Terry Renneck, resident at space #66 at 120 W. Dixon Landing Rd, appreciated the efforts of the lawyer. Her rent increase was going to be 50% and there should be no comparison to apartments.

Motion: to close the public hearing

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

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

City Attorney Ogaz provided explicit instructions to the Council on actions it could take.

Councilmember Polanski commended the Mobile Home Park Rental Review Board for its efforts, especially at the two day hearing earlier this year. She talked to one of the residents recently and agreed the process was fair, and respected the decision of the Board.

Vice Mayor McHugh supported the decision, had voted for the original ordinance way back, and he moved to adopt the resolution. Councilmember Gomez seconded the motion, and commented on his role at this appeal hearing.

Councilmember Giordano would vote in support. She was not generally a proponent of rent control, while the process for this hearing was done correctly.

Mayor Esteves supported the Board, and the extensive analysis done by the Board in coming to its decision to deny the rent increase proposal.

Motion: to adopt Resolution No. 8164 that upholds the decision of the Mobile Home Park Rental Review Board on January 26, 2012, denying the Friendly Village Mobile Home Park owner's request for a rent increase

Motion/Second: Vice Mayor McHugh/Councilmember Gomez

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

## 2. McCandless Mixed Use Project – Integral

Senior Planner Sheldon Ah Sing summarized four years of work on the large gateway project within the City's Transit Area Specific Plan area. For this McCandless central point location, there was a previous project summary and the request was to amend the Conditional Use Permit into District 1 and District 2. Staff referred to comments received by attorneys for a union that opposed the project and those comments were addressed in the program Environmental Impact Report (EIR) that was already done. The Planning Commission had reviewed this project and recommended approval by the City Council.

Mayor Esteves asked for further explanation in more detail of four significant identified exceptions for the project related to building setbacks, trees removed along McCandless, parking structure entries, and ceiling heights for some retail. Additionally, the Mayor inquired about pedestrian and bicycling circulation, and traffic impacts at the pedestrian oriented project. Staff reviewed those.

Mr. Evan Knapp, representing Integral, responded to the Mayor on the question of timing of the construction of building District 1 and District 2 structures, in terms of timing for the density getting completed. He reply was: almost simultaneous.

Vice Mayor McHugh was concerned about environmental issues in the EIR done for the project and the City Attorney responded on the adequacy of that document.

Next Mayor Esteves opened the public hearing for speakers.

Ms. Robin Purchia, attorney from Adams Broadwell firm in South San Francisco, spoke on behalf of a Milpitas coalition, urging the need for a supplemental EIR beyond the program EIR already completed. She believed the proper process was not followed, and several impacts were not mitigated.

Donna Trapp, 152 Corning Ave, asked if the project would use local labor to build. She also wondered where children would go to school in that area.

Devon Quillas, Palmer St. resident and Sheet Metal Workers union member, was excited about his career, grew up in Milpitas and would like to continue to raise his family here. He felt having no affordable units in the project was wrong.

Fernando Berrera, grew up in Milpitas and went to high school here, discussed standards of what was being built around the Bay Area, including Milpitas.

John Darylripple, worked with the Sheet Metal Workers, asked a group of people to stand in audience and he stated there were the folks who filed the lawsuit. They were union members and workers. He complained of no affordable housing in the project and urged the Council to vote to reject the project or postpone it.

Bill Guthrie, Local 23 union was representing various trades workers, discussed the workers and cared how the McCandless Project would be built, responsibly.

Mr. Zuniga, lived here 30 years and had two kids, had recently moved and was an apprentice in Sheet Metal Workers union. He stressed the need for work to support his family.

Robert Marini, Milpitas resident, felt with the increasing population with more residents it would decrease the vote of people with regard to tax increases. Milpitas had the highest sewer charges in Santa Clara County, and this action would marginalize the right to vote.



(2) Motion: to adopt Resolution No. 8165 approving the Site Development Permit, a Major Tentative Map and Conditional Use Permit for the McCandless Mixed Use Project located at 1315-1600 McCandless Drive, and additionally, that the developer give consideration to local labor when hiring and to include art pieces in the construction of the project

Motion/Second Councilmember Gomez/Vice Mayor McHugh

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

At 9:18 PM, Mayor Esteves announced Council would take a ten minutes break. Members reconvened at 9:32 PM.

**3. Urgency Ordinance No. 38.804**

Felix Reliford, acting Planning Director, referred to the February 7, 2012 City Council meeting when an interim ordinance was adopted for a moratorium on conversions from industrial land to residential uses. Staff recommended extension of the ordinance for a specified period of time, for four and one-half months.

Mayor Esteves opened the public hearing for comments.

Robert Marini, Milpitas resident, felt it should be extended for greater than one year.

City Manager Williams pointed out that a 4/5 vote was necessary for adoption.

(1) Motion: to close the public hearing

Motion/Second: Councilmember Polanski/Vice Mayor McHugh

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

City Attorney Ogaz read aloud title of the Urgency Ordinance No. 38.804, "An Uncodified Urgency Ordinance of the City Council of the City of Milpitas Extending a Temporary Moratorium on the Acceptance, Processing and Approval of Applications for Conversions of Certain Industrial and/or Commercial Zones to Residential Zones."

(2) Motion: to waive the reading beyond the title of Urgency Ordinance No. 38.804

Motion/Second: Vice Mayor McHugh/Councilmember Gomez

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

(3) Motion: to adopt Urgency Ordinance No. 38.804 extending the moratorium on certain land use conversions for four months and 15 days

Motion/Second: Councilmember Polanski/Vice Mayor McHugh

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

Councilmember Giordano voted no, as she did on the previous ordinance, because she felt that another way besides a moratorium would better meet the needs of the policy.

**UNFINISHED BUSINESS**

Two items were approved on consent calendar.

**4. Budget Items**

City Manager Tom Williams provided detail on non-public safety and non-public works proposed reductions in the City's FY 2012-13 budget, through staff and other reductions

to be implemented, if approved.

Councilmember Polanski discussed the motion made last month on the \$3 million from reserve funds to balance the current FY budget. Councilmember Giordano noted that the list left off “core services” and should be added as a priority.

City Manager Williams reviewed a detailed list of cost reductions in Recreation Services to arrive at \$416,192 in cuts.

Councilmember Gomez inquired about details of the Rainbow Theater, to learn costs versus revenues. He suggested offering the program as a contract class, similar to other Recreation program classes for the community. He also inquired about the Teen Center, and whether it could be run differently, such as by a non-profit group. Mayor Esteves suggested considering the Boys & Girls Club.

Vice Mayor McHugh referred to the Tidal Waves swim team and discussed cost and how to maintain the program with reduced costs.

Councilmember Polanski asked if there was time to consider the operating hours of the Milpitas Sports Center. Acting Recreation Director Carmen Valdez responded that there had already been a reduction in service hours this year.

Councilmember Gomez asked about increased fees. City Manager Williams replied about increasing fees, and the results of implementing those. He reported the Milpitas Senior Center was a high cost center for Recreation services.

Mayor Esteves sought a comparison to other cities and what services were offered for what cost, and how much was subsidized by the City for Recreation services.

Mr. Williams reported that the Harvey Rose firm could not conduct the audit previously requested by the City Council, since it had a conflict of interest. He had spoken to one firm about possibly doing the job as a sole source or conduct an RFP.

Councilmember Giordano felt the audit was to be in conjunction with a process on how to balance the budget. She questioned how productive it would be and its impact on budget.

Vice Mayor McHugh gave a suggestion to possibly contact three local firms.

Mayor Esteves repeated his strong objection to an outside audit.

Councilmembers discussed the length of time that may be needed, possible dates and firms, the purpose and goals, and the ultimate outcome of an audit, as requested.

Councilmember Gomez asked about employees’ input into budget process. He inquired if the City Manager was giving information that was requested to employees.

Councilmember Giordano reported that the e-mail trail showed all of this had been done and she thanked staff for the steady flow of information.

Councilmember Polanski pointed out members of the public were here and wanted to speak. She referred to a definition, and read the explanation of what a “forensic” audit was, usually. She did not think that type was actually necessary.

Next, Mayor Esteves called for comments from the public.

James Levers, Public Works employee who lived in San Ramon, CA, read comments from Public Works employees and wanted an opportunity to give a presentation at the next City Council meeting on the agenda.

Councilmember Giordano asked about his union affiliation, and why did the letter come in 30 days after the budget discussion began.

Lollie Williams, Milpitas resident, felt if Council considered cutting recreation programs, then she wanted them to know programs for youth need to be supported. Youths in the City needed use of the library on evenings and weekends, for example.

Robert Marini, Milpitas resident, said the City Council needed to take the highest salary employees and give them a "haircut." Also there were too many paid holidays.

Ellis Miller, a UPEC local 782 representative, had a meeting with City staff on Thursday and by the next Council meeting would be ready to come forward with a proposal.

Sarah, a Milpitas High School student, had participated for six years in Rainbow Theater and urged Councilmembers not to cut the program for all young people in the City. She found it very rewarding and hoped it would help more children in Milpitas.

Martha, a resident of Mt. Diablo Ave. and second generation resident of the City, addressed the value of Rainbow Theater and wanted the City to maintain it. She knew thousands of people were served, if considering audiences at all the shows.

Adam Brown, spoke in favor of the Rainbow Theater and its value to local children.

Mayor Esteves commented to the Rainbow Theater supporters, and that he did not support cutting the Rainbow Theater. He knew about all the advantages of the program for young people in the City and wanted to maintain it.

Motion: (1) to direct adoption of budget recommendations (cuts on the list provided by the City Manager) seen before the Council, with the Recreation Services cuts with the condition that staff look at contracting out the Rainbow Theater and the Teen Center, and anything else on the laundry list that was open ended that might seem to work;  
(2) to direct staff move to forward if time permits to come back with the forensic audit to be completed in a timely fashion by April 15 or 20, on time to disseminate and get it out to meet the May 8 deadline;  
(3) in terms of other unions presenting to the Council, she was open to that, but it was not what she had in mind to allow 90 days for unions to get together in collective and internal process and involved management to facilitate that process, and was hesitant to have something brought forward to Council, need a full process at that level to look at what the offer was, when negotiating in closed session with staff. She was not sure how that would work, was not what she had in mind, so was open to listening to the proposal, but did not think it was the time, it should go through staff first. Wait to see the proposal at the next meeting. Staff needed to review the proposal first and elaborate on that before it was presented to the Council.

Councilmember Giordano then re-stated a summary of the motion stated above.

Councilmember Gomez commented on her motion, and she replied staff would review any employees' proposal, and then present it to Council - in open session, yes.

Councilmember Gomez then seconded the motion by Councilmember Giordano.

Mayor Esteves agreed with items one and three but not the second item in the motion.

Vice Mayor McHugh felt Public Works employees could have 20-30 minutes to make a presentation to the Council in open session. Afterwards, City staff could analyze it, and respond later to make recommendations to Council.

Councilmember Polanski responded, regarding the audit, to give the City Manager the ability to look at it and see if he could have an effective audit done in time. She agreed

