

**MEETING MINUTES
CITY OF MILPITAS**

Minutes of: Regular Meeting of Milpitas City Council
Date: Tuesday, April 17, 2012
Time: 5:30 PM
Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas

ROLL CALL

Mayor Esteves called the meeting to order at 5:30 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 to attend the Closed Session of the Council.

CLOSED SESSION

City Council convened in Closed Session to discuss labor negotiations regarding six employee organizations, and one anticipated case of litigation.

RECEPTION FOR COMMISSIONERS

At 6:06 PM, the City Council departed the Chambers to the City Hall rotunda lobby for the recognition event for all City of Milpitas Commissions, Board and Committee members. Certificates were distributed, accomplishments acknowledged, and a reception with cake was enjoyed by all.

City Council then convened in Open Session at 7:14 PM.

ANNOUNCEMENT

None

PLEDGE

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

INVOCATION

Mayor Esteves introduced Father Justin Le of St. Elizabeth Church in Milpitas, who then offered the invocation prayer to start the meeting.

MINUTES

Motion: to approve the City Council meeting minutes of April 3, 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 April and May 2012, as amended

City Manager Tom Williams noted that the April 16 Economic Development Subcommittee meeting was canceled.

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

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

PUBLIC FORUM

Michaela Parish, age 9, Rainbow Theater participant, and wanted support for continuing the program. She gave books to the City Council entitled "Secrets of the Millionaire Mind."

Madison, Milpitas resident and young actress, supported Rainbow Theater after participating for the last three years.

Lisa Murano, Milpitas resident and mother of Rainbow Theater actress, spoke in favor of the continued program.

Kenneth Tan, of Union City and “Project 51” a real estate program with donations to non-profit groups, he gave some literature to the City Clerk for the Council.

Martha Brown Lamdin, sent e-mail to City Council earlier, read aloud a letter from another parent Kristy Bradford of Rainbow Theater and sang a song of support.

Aneshka, Fremont 9-year-old girl, participated and supported Rainbow Theater.

Robert Marini, Milpitas resident, spoke of maintaining services and levels of service. He complained of a calculation that was not done related to water meter reading fees.

Gita, a Fremont resident and mother of Rainbow Theater actress, spoke in favor of the program.

Mayor Esteves reported he got more than 200 emails in support of Rainbow Theater.

Sarah Lamdin, a student in the Rainbow Theater program, felt kids would have nothing to do if the Theater program ended.

ANNOUNCEMENTS

Councilmember Giordano announced the *Milpitas Got Talent* show, with auditions this Saturday, April 21 at 1:00 PM at the Teen Center, and the show scheduled May 4.

Councilmember Polanski attended the Rainbow Theater’s performance of *Stuart Little* last weekend, and she enjoyed the play. Knights of Columbus held its annual awards banquet last Saturday, and she announced the winners. She also reported that the “Every 15 Minutes” event would occur at Milpitas High School over the next two days April 18-19.

Vice Mayor McHugh said he got 320 emails in support of Rainbow Theater. Last Thursday, he represented the City at the BART groundbreaking ceremony in San Jose and complimented voters in Santa Clara County. The VTA Silicon Valley BART Working Group held its first meeting on April 9, and he was appointed the Vice Chair.

Mayor Esteves congratulated one local church for its family program.

ANNOUNCEMENT OF CONFLICT OF INTEREST

None.

APPROVAL OF AGENDA

Motion: to approve the agenda, as presented

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

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: Councilmember Polanski/Councilmember Giordano

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

* 5. Commission appointments Re-appointed Donald Peoples, representing business owners, to a new term that expires in April 2015 and re-appointed Warren Wettenstein, representing the Chamber of Commerce, to a term that expires in April 2015.

* 6. Survey on Mall Policing Received the update report from the Chief of Police on mall security.

- * 7. Public Art Committee By Laws Approved the updated Public Art Committee By Laws changing meetings times to alternate months, six times per year.
- * 8. PAC Master Plan Approved the Public Art Committee Master Plan for 2012-13.
- *10. Fee Waiver for Relay for Life event Approved the Milpitas Relay for Life request for fee waiver and in-kind donations of equipment, supplies, facility use and staffing totaling \$7,466.82 for the June 22-24, 2012 American Cancer Society *Relay for Life* event at the Milpitas Sports Center.
- *11. Accept Grant for After the Bell program Accepted the Milpitas Parks and Recreation Foundation grant in the amount of \$3,800 to be incorporated into the Milpitas Recreation Division budget for 2012 After the Bell program Olympics.
- *12. Ordinance. No. 38.803 Waived the second reading and adopted Ordinance No. 38.803 for Zoning Amendment ZA12-0001, Conditional Use Permit Streamlining.
- *13. Ordinances No. 192.25 and No. 192.26 Waived the second readings and adopted Ordinance No. 192.25 and Ordinance No. 192.26 repealing the 6th Amendment to the Great Mall Redevelopment Project and the 13th Amendment to the Plan for Project Area No. 1 and the related findings.
- *14. Ordinance No. 54.25 Waived the second reading and adopted Ordinance No. 54.25.
- *15. Resolution Accepting Project No. 8182 Adopted Resolution No. 8173 granting initial acceptance of the City Facilities Improvement “Community Center Heating, Ventilation, and Air Conditioning (HVAC) Replacement” Project No. 8182/3406, subject to a one year warranty period and reduction of the faithful performance bond to \$41,416.
- *16. Contract for Project No. 4259 Authorized the City Manager to award a construction contract for Escuela Parkway Pedestrian and Bicycle Enhancement Project, Project No. 4259, Federal Project No. RPSTPLE (009). Authorized staff to execute change orders for Project No. 4259, provided the change orders do not exceed established construction contingency amount for the project and do not require additional appropriation.
- *17. Agreements with Santa Clara County Authorized the City Manager to execute agreements with Santa Clara County for collection of AB 939 Implementation Fees and administration of the Countywide Household Hazardous Waste Collection Program.
- *18. Contract Extension with PMC for a CAP Authorized the City Manager to execute a contract with PMC for the development of a Climate Action Plan, for an amount not to exceed \$29,020.

PUBLIC HEARING

- 1. CDBG allocations for FY 2012-13 Acting Planning Director Felix Reliford reviewed recommendations for the reduced amount of federal Community Development Block Grant funds. \$390,716 in total was a 27% reduction from the last fiscal year. On March 2, the Community Advisory Commission met and developed the recommendations for funding to meet community needs. Also, the One Year Action Plan was required to state how funds were allocated.

Councilmembers provided feedback to staff on the priorities for this money, the reduced amount of the grants, and the overall needs in Milpitas.

Next, the Mayor opened the public hearing.

Karen Kolander, Milpitas Food Pantry, thanked the City Council for its funding to date, and the needed funds for the new Fiscal Year. Food Pantry had served more than 3,000.

Michele Schroeder, from SALA, said her agency offered legal services to seniors and thanked the City Council for its support over 17 years. The seniors received legal help

from SALA lawyers at the Milpitas Senior Center.

Wanda Hale, the Long-term Care Ombudsman program manager, hoped for continued support as given over many years. It helped support seniors in nursing care homes.

Ann Marcourt, of Project Sentinel, thanked the City Council for many years of City support through the CDBG funds. She hoped to bring in federal funds for services.

Beverly Jackson of Rebuilding Together Silicon Valley, thanked the Council and said they would do more with less for low-income homeowners with repair work.

Emily Hennessy of Santa Clara Health Foundation, for the Healthy Kids program, requested funding as provided in the past, and asked to reconsider funding at \$5000 – a minimal amount that could fund five of the 144 Milpitas children in need of health care. Mayor Esteves wanted to fund \$5000 for this program and take it out of the two parks.

Anna Jones, a Live Oak Adult Day services program manager, helped seniors in Milpitas and those who could not go to Milpitas Senior Center. One center in San Jose was able to accept clients from Milpitas, with the average age of 80. She thanked the Council for its continued support.

Ben Kong, of EHC Lifebuilders, provided shelter and supportive services for homeless persons. Last year, his program helped 21 homeless Milpitas people through the Emergency Housing Consortium.

Paul Lerner, the property manager at Terrace Gardens, thanked Council for its ongoing fiscal support. 182 senior residents lived there, and funding would provide new stoves in the apartments and make them more energy efficient.

Linda Lambert, with Milpitas Family Literacy Program, helped 3, 4, and 5 year olds and their parents teaching them to get ready for reading and school.

(1) Motion: to close the public hearing

Motion/Second: Councilmember Gomez/Vice Mayor McHugh

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

(2) Motion: to authorize the Community Development Block Grants to Milpitas community organizations via funding, as recommended by the Community Advisory Commission, and in addition to ask the CAC to review the Council adopted priorities for next year, and to approve the one-year Action Plan for FY 2012-13

Motion/Second: Councilmember Gomez/Councilmember Polanski

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

Vice Mayor McHugh would register a “no” vote, and it had nothing to do with the 15 items recommended by CAC. He disagreed with the non-public services allocation proposed, and noted some facts in the draft Capital Improvement Program booklet.

UNFINISHED BUSINESS

2. Carry Out Plastic Bags

Assistant City Engineer Kathleen Phalen explained the request for City of Milpitas to join with other cities to participate in an Environmental Impact Report spearheaded by San Mateo County, to consider a future ban on plastic carry-out single use bags. According to a survey done in 2011, 54% of Milpitas residents supported a plastic bag ban.

Councilmember Gomez inquired about Milpitas businesses and acceptance of a ban by those, since he had received several letters of opposition.

Councilmember Polanski asked about cross-contamination. She referred to a lack of reduction of litter in San Francisco, one city with a current plastic bag ban.

Vice Mayor McHugh responded on contamination, that people could use plastic bags for fresh produce and meat products (as an exemption). He felt the Council could modify the staff recommendation for a potential ordinance to ban the bags, by first simply monitoring San Mateo County's progress after adoption of any ordinance.

Mayor Esteves asked about the ten cents charge per plastic bag, as recommended, and the basis for it. He felt the cost should be borne by the business, not the customer.

Councilmember Gomez wanted information about a statewide ban on these issues. Staff explained that the bills failed to get support in the state legislature. He asked if plastic bags were recyclable, and Ms. Phalen replied that they were hard to capture, and difficult to recycle.

Mayor Esteves asked how much time it would take for outreach and education on a ban. Staff responded, one year.

The Mayor next invited speakers from the audience.

Preeti Suri, owner of Subway franchises in Milpitas, validated Mr. Gomez's concerns about businesses being affected by such a ban, and perhaps sending customers to nearby shopping in other cities, such as Pacific Commons in Fremont.

Jamie McLeod, Santa Clara City Councilmember and Chair of County Recycling and Waste Reduction Commission, wanted to speak on both this item and the next one, so the Council allowed that. Noted some environmental concerns including impacts and runoff of plastic bags. There could be tiered and do-able approaches. On the polystyrene issue, it was suggested for food/beverage only. Her city discussed contracts with its solid waste contractor. She sought support for the staff recommendations on both issues.

Bill Ferguson, Rivera St. resident, supported the plastic bag ban and quoted several statistics. He mentioned litter and danger of the bags to animals.

Dean Peterson, Environmental Health Director for San Mateo County, spoke on behalf of the Board of Supervisors and thanked Milpitas for considering joining his county in the EIR. He urged they go as regional as possible, which would aid citizens and businesses.

Javier Gonzalez, Director of Local Government Affairs for the California Restaurant Association, sent a letter to Council previously. He discussed cleanliness of use of plastic bags and that a ban would be difficulty during down economic time and hurt business.

Rob Means, 1421 Yellowstone resident, spoke in favor of the plastic bag ban. He referred the Council to a video "The Story of Stuff about material that goes to landfill.

Carol Kassab, Milpitas Chamber of Commerce, represented more than 200 local businesses and opposed the proposed plastic bag ban. She urged recycling of plastic bags, not banning the bags outright. She viewed it as punishment of businesses.

Ajay Tallam, a Milpitas resident, was excited this issue was brought back to City Council. It seemed like an easy thing to do, to be part of the EIR and a proposed ordinance, then go ahead. He commented that bag bans would be effective all surrounding Milpitas, once Fremont/Alameda County goes into effect on January 1, as was already in San Jose.

Councilmember Giordano stated she opposed moving forward with anything of this nature, due to opposition of California Restaurant Association, opposition from Chamber and to keep Milpitas as business friendly. She was an advocate of less government, and that would then have to monitor if restrictions were put in effect. It would be more staff work to keep track of this.

Vice Mayor McHugh felt that single use bags were a real problem. He supported the staff recommendation but to change the third one to monitor the San Mateo County ordinance. A regional approach was a good idea, to reduce the waste strain and impacts of bags.

Mayor Esteves said this was a serious environmental issue, with a good opportunity to join San Mateo County on its EIR. He did not support the third item in the staff's recommendation and was ok with monitoring it. He wished to make sure any ban would be cost neutral and not to add costs for local small businesses.

Motion: 1) to receive the single use bag report, 2) to direct staff to participate in the Environmental Impact Report led by San Mateo County, including hosting a scoping meeting on May 3, and 3) to monitor and evaluate model ordinance by San Mateo County

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

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

Mayor Esteves announced the City Council would take a break at 9:51 PM and then they reconvened at 10:04 PM.

Mayor Esteves asked to move agenda Item No. 9 (Draft CIP review) to the next meeting and the Council concurred with his request.

3. Polystyrene Container

Assistant City Engineer Kathleen Phalen referred to work done by the City's Recycling and Source Reduction Advisory Commission and staff to bring the study on these food containers to the City Council. There was now a request for support for legislation in the state Senate on a proposed ban on "clam-shell" polystyrene containers for to-go food.

Mayor Esteves and City Councilmembers asked variety of questions to staff on the recommendation.

Carol Kassab, CEO Milpitas Chamber of Commerce, stated the Chamber was opposed to SB 568, especially for its restaurant members.

Javier Gonzalez, of the California Restaurant Association, handed out a chart of price comparisons for the cost of alternative (non-polystyrene) containers for take-out food. He and his agency opposed SB 568.

Rob Means, 1421 Yellowstone resident, felt it was noteworthy that 70% of residents supported a ban on these containers, and he wanted them to be leaders on doing something about this issue. He urged no more use of EPS containers at City of Milpitas.

Ajay Tallum, Milpitas resident, said this was simple and straightforward. He supported the idea to ask the City to ban EPS containers at the City government. Fremont Chamber did issue support for this legislation. A statewide ban makes it simpler for all.

Ryan Kenny, American Chemistry Council, agreed with all that litter was a problem. If banning one type of litter, it would just create litter of another type. It should be one standard for a variety of food service containers. Cities had not done studies to prove that a ban on polystyrene would reduce litter. San Jose, Morgan Hill, and Santa Clara did not ban this type of container recently.

Councilmember Polanski asked questions to staff about survey results, as did the Mayor.

Vice Mayor McHugh moved the staff recommendation as presented in the written report, however, no second was offered and the motion failed. So an alternate motion was made.

Motion: to receive the EPS food container study report, to note receipt and file it

Motion/Second: Councilmember Giordano/Councilmember Gomez

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

4. Budget Response

Director of Public Works Greg Armendariz addressed the Council, with his remarks in response to a presentation given at the last City Council meeting. He had a proposed draft budget of \$12.0 million for public works maintenance. He stated the City had 10% contracted services at this time. Item by item, he provided financial response to the Public Works staff's previous presentation.

Mr. Armendariz continued explaining the calculation of 805 work hours per year for each employee would need to be added, if eliminating ten maintenance workers and contracted work. He credited the Public Works staff with dedication and hard working crews. However, it would not be right to burn out the staff, which would surely happen. There was a need for a new service delivery model, to focus on core services of Public Works. Engineers needed to work ever more closely with maintenance crews who knew the details of city infrastructure.

Councilmember Giordano said to look at a different formula, to offer \$1.2 million savings, and other discussions to date. She asked the Public Works Director of the impact to remaining areas he managed.

Vice Mayor McHugh asked City Manager Tom Williams if he concurred with Mr. Armendariz, and the City Manager said yes.

Mayor Esteves was appreciative of the numbers provided in the staff presentation. He wanted concessions from the City employees and he felt that he was not being understood. He rejected the Public Works task force recommendation and complimented the City Manager and Public Works Director.

The Mayor invited speakers from the audience.

Paul Mullett, Public Works supervisor, referred to comments given seriously from the last City Council meeting. He would like to meet with staff to go over the proposal after last time. He too definitely did not want to burn out the staff.

City Manager Williams noted for the record that he did have a telephone conversation with Mr. Mullett and Mr. Armendariz yesterday afternoon.

Councilmember Giordano moved to accept the City Manager's recommendation and to prepare the budget accordingly with those cost reductions, so that Council could prepare the other departments and make their proposals, and to balance this budget. She also added to the motion, with regard to two main issues in need with the community, to direct staff to fund 50% of the fireworks program (after complimenting two Councilmembers for fundraising efforts) and after donations were received, fund 50% only if it was needed, and, that the City also fund 50% of the Rainbow Theater program and the parents pick up the other part to allow it go forward.

No second was offered, so the motion died.

