

**MEETING MINUTES
CITY OF MILPITAS**

Minutes of: Regular Meeting of Milpitas City Council
Date: Tuesday, May 1, 2012
Time: 6:00 PM
Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas

ROLL CALL

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

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

ABSENT: None

CLOSED SESSION

City Council convened in Closed Session to discuss labor negotiations regarding four items related to employee organizations, and various cases of litigation.

City Council then convened in Open Session at 7:03 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 to start the meeting.

MINUTES

Motion: to approve the City Council meeting minutes of April 17, 2012, as submitted

Motion/Second: Councilmember Giordano/Councilmember Polanski

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

SCHEDULE OF MEETINGS

Motion: to approve the Council Calendars/Schedule of Meetings for May 2012, as submitted

City Manager Tom Williams noted the date of the next Milpitas Oversight Board would be Wednesday, May 9, 2012 at 5:00 PM.

Motion/Second: Councilmember Giordano/Councilmember Polanski

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

PRESENTATION

Mayor Esteves proclaimed the month of May as *Building and Safety Month* and the proclamation was accepted by Senior Building Inspector Dorsey Wiseman and Building Department staff.

PUBLIC FORUM

Mark Tiernan, 302 Silvera St. Milpitas, urged City Council to re-consider its decision to lay off workers. The Council must protect workers by negotiating with employee unions.

Jennifer McAllister, 1079 O'Brien Ct., San Jose, spoke as a representative of the ACLU Santa Clara Valley Chapter. She addressed the abatement order received by Milpitas resident Rob Means regarding his sign and mentioned the ACLU's request for public records, with no reply yet. Her organization had serious concerns that his civil liberties may have been violated. She and staff would be happy to work with City staff to amend the sign ordinance if necessary.

Howard Hall, Calaveras Rd, Milpitas, was a concerned citizen on behalf of the workers about to be laid off by the City. Workers were being targeted, after they gave back the most over the last three years. He had concerns about water safety at parks and the safety of workers at city facilities. He planned to spend his money elsewhere if these people were laid off.

Ellis Miller, of Redding, CA and one of the union representatives of Local 792, was proud to be a labor leader for public employees of all levels of government. Employees provided all kinds of service for residents as opposed to unknown contractors. He urged Council to save jobs.

Paul Mullett, Public Works employee, stated he and others had collected over 700 signatures in three days by talking to residents in City parks. 99% do not want workers to be laid off by the City. He held up the plan offered by Public Works employees and would be glad to sit down with anybody, and come to agreement on the plan, and agree on a dollar figure, to save 39 jobs.

Adelina Gonzalez, a 30 year resident of Milpitas, came to support friends of hers who worked for the City. She asked City Council to take a second look and if there was anything else to look at.

Chris Darker, business manager for Local 792 union, supported workers who were here tonight. He commented on negative outcome of layoffs of public employees, actions to date, and a 1991 resolution adopted by past City Council. He knew there was a requirement to meet and confer with the union, which the City had not done.

Debbie Giordano, questioned Mr. Darker, about whether he had participated in previous negotiations for the MEA and MSA employee groups. Those resulted in an MOU with a provision on what could occur if the state eliminated the Milpitas Redevelopment Agency. She requested a response from City Attorney Mike Ogaz.

Steve Munzel, Milpitas resident, stated when voters elected Councilmembers, it was for those folks to do the best to provide city services to residents. He urged that all sources of revenue should be investigated to balance the budget. There should not be a reason for a recall, and all elected officials must uphold the constitution.

Eddie Bell, 946 Coyote St., Milpitas, represented Milpitas Little League as treasurer. He truly appreciated the dedicated employees who took care of parks, and they did a great job caring for City property. He was concerned about outsourcing such jobs, and looking after the parks safely.

Brad Alexander, Smithwood St. resident of 22 years, said it was a shame what may happen to 39 people in City of Milpitas. He asked if top management took a pay cut over the last three years. He discussed licenses necessary when working around landscaping and parks, and overall urged reconsideration of the outsourcing plan.

ANNOUNCEMENTS

City Manager Williams invited Councilmember Polanski to report some news. She then announced that the City had received donations of \$2,000 from John Wong of Mission Peak, and a \$10,000 commitment from KB Homes, along \$11,000 in funds raise last year, all toward the Rainbow Theater program. She thanked businesses for stepping up to help the City at this time.

Councilmember Gomez reported that the City had received \$36,000 so far of \$51,000 committed for donations toward July 4th fireworks.

ANNOUNCEMENT OF CONFLICT OF INTEREST

None.

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

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

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

- * 3. Odor Control Report Received the April 2012 odor report.
- * 4. Commission Appointments Re-appointed Chandru Bhambhra, representing residential real estate, to a new term to expire in April 2015, and re-appointed Dinna Bayangos as Alternate No. 1 to a term to expire in April 2014.
- * 6. Investment Status Received the investment report for the quarter ended March 31, 2012.
- * 8. Resolution LLMD 95-1 Adopted Resolution No. 8174 directing the preparation of the Annual Engineer's Report for LLMD No. 95-1 at McCarthy Ranch.
- * 9. Resolution LLMD 98-1 Adopted Resolution No. 8175 directing the preparation of the Annual Engineer's Report for LLMD No. 98-1 at Sinclair Horizon.
- *10. Resolution for Agreement with EPS
 1. Adopted Resolution No. 8176 authorizing an interfund loan agreement with the City in the amount of \$145,000.
 2. Authorized the City Manager to execute a consulting agreement with EPS, Inc. in the amount of \$145,000.
 3. Authorized the City Manager to approve a budget appropriation in the amount of \$145,000 from the Sewer Fund.
- *11. Contract for Street Paving
 1. Approved a new CIP Project - Street Resurfacing Project 2013, Project No. 4268.
 2. Awarded a construction contract to Bay Cities Paving and Grading, Inc. for Street Resurfacing Project 2013 on Milpitas Boulevard between Gibraltar Drive and Beresford Court, Projects No. 4255, 4261, 4268, and 3403, in the amount of \$1,682,968.90.
 3. Approved a budget appropriation by advancing of Transient Occupancy Tax (TOT) funds in the amount of \$500,000 and Gas Tax Funds in the amount of \$100,000 for the new Street Resurfacing Project 2013, Project No 4268.
- *12. Amendment to Agreement with Communication Academy Authorized the City Manager to execute Amendment No. 1 to the Recreation Service Agreement with Communication Academy for the total not-to-exceed amount of \$25,000
- *13. Amendment to Agreement with Noteworthy Music Authorized the City Manager to execute Amendment No. 1 to the Recreation Service Agreement with Noteworthy Music for the total not-to-exceed amount of \$30,000.
- *14. Bids for Park Renovations Approved the plans and specifications, and authorized advertisement for bid proposals, for the Park Renovation Project 2011 "Pathways" at Pinewood Park and Albert Augustine Jr. Memorial Park, Project No. 5091.
- *15. Sidewalks, Project 4254 Approved a budget appropriation in the amount of \$38,905 from the ABAG Risk Management Grant to the Sidewalk Replacement 2011, Project No. 4254.
- *16. Agreement with Schaaf & Wheeler Approved and authorize the City Manager to execute an agreement with Schaaf & Wheeler Consulting Civil Engineers, in the amount of \$41,729, Project No. 3706, subject to approval as to form by the City Attorney.
Approved a budget appropriation in the amount not to exceed \$41,729 from the Storm Drain Fund into the Minor Storm Drain Projects 2011-12, Project No. 3706.
- *17. Abel Street Transit Connection Authorized the City Manager to award a construction contract for Abel Street Transit Connection Project No. 4260, Federal Project No. CML-5314 (003).

Authorized staff to execute change orders for Abel Street Transit Connection Project, Project No. 4260, Federal Project No. CML-5314 (003) provided that the change orders do not exceed the established construction contingency amount for the project, and do not require additional appropriation.

UNFINISHED BUSINESS

1. Field Allocation

Recreation Supervisor Jaime Chew presented a report on playing fields allocation and the recommendation for a new process for the fields. She provided background information on powerpoint slides. The major change was going to three tiers, and the last two geared toward those with 75% Milpitas residents on a team or group, and implementing the change from 51% to 75% residents over a three year period.

Councilmember Polanski noted that PRCRC Chairman Steve Munzel was in the audience. She reported that Commissioners wanted to see more Milpitas residents using the City's fields, especially with budget funds so tight. \$10 per child per season was the current fee. Some had felt with year-round sports that could be a burden.

Councilmember Giordano asked to confirm that PAL and MYSC soccer clubs participated in the meetings to come to these recommendations and staff replied yes.

In response to the Mayor's questions, Ms. Chew said in May, staff would meet with the teams and groups requesting fields for the fall, so the new rules would apply then.

Mayor Esteves invited speakers from audience.

Steve Munzel, Chair of the Parks, Recreation and Cultural Resources Commission, reported that the soccer club conflict in use of the fields had come many times to the Commission. Finally, after they met for met for hours, all parties could buy into the process decided at the end. This will serve Milpitas kids well.

Robert Marini, a Milpitas resident, asked why the amount of residents on a team did not go up to 100% for the use of fields.

Councilmember Polanski responded to the speaker, explaining that the Commissioners talked about that idea, but there were a number of students who attend school in Milpitas, but reside in San Jose or live in unincorporated area, etc. They wanted to play on fields in the City with their teams, so 75% was most fair percent for a majority of sports teams.

Motion: to approve the new field allocation process with three tiers and new priorities including increased percentage of residents on playing teams, as recommended by the Parks, Recreation and Cultural Resources Commission

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

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

2. Draft CIP 2012-2017

Public Works Director/City Engineer Greg Armendariz identified impacts due to the loss of the City's Redevelopment Agency in the amount of \$23.8 million toward CIP projects, especially in the Mid Town and Transit Areas. He highlighted various CIP project improvements accomplished over the last year. He detailed recommended projects for the FY 2012-13 CIP.

With regard to street paving and current status, the City had a reported Pavement Condition Index improved rating from 68 to 69, which bumped up the PCI last year. That was due to the addition of funds voted in last year's CIP for street repaving. There was a gap in funding anticipated for the upcoming year, so staff would continue to seek grant opportunities.

Councilmember Gomez asked about funds available from the 2% Transient Occupancy Tax fund. Finance Director Emma Karlent replied the estimate was about \$5 million remaining in that fund, with about \$1 million earnings per year.

Mayor Esteves inquired that if the CIP Budget remained programmed at \$2 million funding for streets, what would be the PCI? Staff replied that it depended in part on the cost of asphalt. PCI could drop one point per year, as an estimate. The Mayor stated that street maintenance was a priority.

Staff identified several critical projects that require funding in near future on streets, bridges, city buildings and storm system. Projected costs for the items identified were sought, and Mr. Armendariz reported that he would return at the budget hearing with an amount requested over the next five years for the projects.

Councilmember Gomez asked the City Attorney about voting thresholds needed to have voters adopt certain taxes on the ballot.

Councilmember Polanski noted that the Finance Subcommittee looked at other things to do to set aside funds for some of the aging infrastructure. They would discuss it again in the future, including depreciation funds. She asked the City Engineer to explain the concept that “growth pays for growth.”

Mr. Armendariz replied to Mayor Esteves that he would provide a list of projects and costs at the budget hearing next Tuesday evening.

Mayor Esteves next invited speakers from the audience.

Robert Marini, Milpitas resident, did not understand where funds were coming from for these projects, when mixing utility funds in with the General Fund.

Councilmember Gomez asked about the Milpitas Sports Center and an update of the Master Plan in future. This was an unfunded item. Mayor Esteves would like to leave in the CIP into the future, the “wish list” items as unfunded long-term projects. Then, the City Council needed to work toward locating funds to get those done.

Motion: to receive the staff report on the next 5-year CIP, and recommend its adoption at the budget hearing, along with the FY 2012-13 budget, in final form

Motion/Second: Councilmember Giordano/Councilmember Polanski

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

At 9:00 PM, Mayor Esteves announced the Council would take a 10-minutes break. The City Council returned to the dais at 9:14 PM.

REPORT OF SUBCOMMITTEE

5. Update on Regulation of Medical Marijuana facility

Councilmember Polanski spoke on behalf of the Council Transportation and Land Use Subcommittee, on the issue of medical marijuana facilities, and they were not recommending any change to the City’s current ordinance (banned). They did review and research the topic, and came up with a policy document.

Councilmember Armando Gomez gave his update with powerpoint slides. He thought a strong regulatory ordinance should be in place in the event that courts or legislation require these facilities. Topics discussed: compassion and need, taxation and fees, legal developments, land use and regulatory issues.

City Attorney Mike Ogaz provided a legal update on three issues related to medical marijuana: current legislation AB2312 (Ammiano), the Lake Forest case, and three cases before the California Supreme Court.

Mayor Esteves responded that the Subcommittee considered this issue as instructed by the City Council, and those members had to study this complex, sensitive and political issue. He thanked Mr. Gomez and Ms. Polanski. He commented that all cities in Santa Clara County were looking at this subject and it was important to be educated on the status of medical marijuana, and to be safe. The Mayor stated his support of the recommendation to keep the current ban on such facilities.

Councilmember Giordano asked the City Attorney about the Assembly Bill. She commented that the Subcommittee brought up this issue, not City Council. She asked questions about the Supreme Court decisions.

Councilmember Polanski stated that the Police Chief and Planning Director attended the Subcommittee meetings to provide information and respond to questions, and many members of the public commented also.

Vice Mayor McHugh felt the current ban was appropriate at this time, until there was resolution between the city and the state.

Mayor Esteves repeated that he wanted to keep the ban, but also wanted to be prepared, as the Subcommittee was working towards.

Mayor invited speakers on the topic.

Ed Riffle, Grand Teton Drive resident, said in most states, it would be preposterous that a state would come in to a City to require pot clubs. Lobbyists were going to cities in California. He wanted to keep this banned in Milpitas.

Robert Windisch, Lacey Drive, Milpitas, commented on the federal Attorney General not going after medical marijuana dispensaries. He was going after the property owners and shutting them down, which affected property tax. A ban still existed in Milpitas and he wanted the Council to keep it.

Linda Windisch, Lacey Drive, Milpitas, commented on the thorough document by the Subcommittee. Residents educated themselves on this and people do not want these medical marijuana facilities in Milpitas. She urged keeping the ban in place. There should be vote of the citizens to remove any ban.

Robert Marini, Milpitas resident, was not a doctor. He thought that a doctor must prescribe this drug that some patients needed, and if legal, to allow the drug.

Councilmember Polanski felt that educating the public was important. She read from a flyer that some residents were using to educate residents, and that contained lies.

Councilmember Giordano felt if marijuana was to be medically prescribed, then there were drugstores. To one resident she stated there could be an ordinance adopted by voters to undo or ban an issue, and referred to the hillside ordinance. She would continue to vote for the ban on the dispensaries.

Councilmember Gomez sought feedback from other Councilmembers on the draft policy document. Councilmember Polanski affirmed this also, with no new action sought.

Motion: to reaffirm the ban on medical marijuana dispensaries in the City of Milpitas until such time as there was clarification and resolution of the various legal issues

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

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

NEW BUSINESS

One item was approved on consent calendar.

ORDINANCE

7. Ordinance No. 227.5

Interim Planning Director Felix Reliford introduced the proposal for an updated ordinance to expand places and provide enforcement within the City where smoking was prohibited in the City of Milpitas. An enhanced ban on tobacco smoke would prohibit smoking at all public parks and within City owned facilities .

Mayor Esteves asked what the impact was on businesses. Mr. Reliford replied that was why outreach to the local business community must be done first before a second additional amendment could be considered. The Mayor requested a comparison with other cities.

Councilmember Giordano asked for explanation on the newer version of the draft ordinance that was distributed, after the agenda packet. Mr. Reliford explained the version for introduction this evening was briefer, with only City parks and facilities.

Mayor Esteves invited speakers from the audience.

Francis Capilli, resident of Milpitas and Healthy Milpitas Coalition member, had 70 supporters of the proposed ordinance. He was a new father, lived near Hall Memorial Park and wanted to make sure parks were safe and healthy for families.

Elaine Harris, Working Partnership organization on many social issues, advocated on behalf of workers. When they cleaned parks, they were exposed to smoking and other health issues. There was no risk-free level of exposure to second hand smoke.

Sara Wright, former legacy fellow with Truth organization, was a youth who worked in cities across the county. The ordinance was a popular first step for young activists to become involved in their communities on a common health issue.

Tanya Beach, a Sunnyvale resident, was active on this issue in South Bay. She'd attended several Subcommittee meetings here. Milpitas youth were very active on this issue and there was support from the Milpitas Youth Advisory Commission.

Councilmember Polanski was totally in favor of this proposal.

City Attorney Ogaz read aloud the title of Ordinance No. 227.5, "An Ordinance of the City of Milpitas Amending the Milpitas Municipal Code to Regulate Smoking in Unenclosed Places."

(1) Motion: to waive the first reading beyond the title of Ordinance No. 227.5

Motion/Second: Councilmember Polanski/Vice Mayor McHugh

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

(2) Motion: to introduce Ordinance No. 227.5

Motion/Second: Councilmember Giordano/Councilmember Polanski

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

RESOLUTIONS

Three resolutions were adopted on the consent calendar.

CONTRACTS

Seven items were approved on consent calendar.

ADJOURNMENT

Mayor Esteves adjourned the City Council meeting at 10:28 PM.

The foregoing minutes were approved by the Milpitas City Council as submitted on May 15, 2012.



Mary Lavelle
City Clerk