

Draft **MEETING MINUTES**
CITY OF MILPITAS

Minutes of: **Regular Meeting of Milpitas City Council**
Date: **Tuesday, October 16, 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 and Councilmember Gomez, Giordano and Polanski

ABSENT: None

CLOSED SESSION

City Council convened in Closed Session to discuss labor negotiations and one litigation matter.

Assistant City Attorney Bryan Otake, who was present in place of City Attorney Mike Ogaz, noted for the record that the reference to Government Code for the second item was correctly Government Code sections 54956.9(b) and (c).

City Council then convened in Open Session at 7:07 PM.

ANNOUNCEMENT

No announcement out of Closed Session.

PLEDGE

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

INVOCATION

Vice Mayor McHugh offered a prayer to start the meeting.

MINUTES

Motion: to approve the City Council meeting minutes of October 2, 2012, as amended

City Clerk Mary Lavelle requested two edits to the draft meeting minutes: on page. 1 add "8" to the date of the canceled Economic Development Commission meeting; and, on page 2, delete "..."
at the end of the sixth paragraph.

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 October, 2012, as amended

City Manager Tom Williams announced two meetings: on Friday, October 12 at 1:00 PM of the Sister Cities Commission, and the Milpitas Oversight Board on Tuesday, October 23 at 4:00 PM.

Councilmember Giordano stated that on this date she attended a County Library Joint Powers Authority Finance Committee at 1:00 PM.

Vice Mayor McHugh directed a comment to the City Manager. He sought the official date that he ceased to be a Councilmember later this fall. He wish replacements to be appointed by the Mayor at the appropriate time to the Committees and he grouped he served.

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

Motion carried by a vote of:

AYES: 5

NOES: 0

PRESENTATION

Mayor Esteves proclaimed "People with Intellectual Disabilities Days" on October 19 to 21, 2012 for two local Councils of the Knights of Columbus: St. John the Baptist and St. Elizabeth's Catholic Churches.

Also, visitors to the City of Milpitas from Sister City of Dagupan in the Philippines were welcomed and presented with a Key to the City. Following the key presentation, a special reception and dance event was held in the City Hall rotunda lobby on the first floor at 7:30 PM.

The City Council meeting resumed at 7:58 PM in the Council Chambers.

PUBLIC FORUM

Robert Marini, Milpitas resident, displayed a paper from Planning Department showing numbers of persons per household. He related the figures to the calculations made by the City on sewer rates, which he felt were overcharged.

Carol Kassab, Milpitas Chamber of Commerce, invited everyone to a "Candidates' Forum" on Wednesday evening, October 17 in the Council Chambers, starting at 7:00 PM.

Antoine Snelgro, a Milpitas resident, reported he had an ongoing issue with a bill from the City over a sports team that played at the Milpitas Sports Center. He sought a solution over an issue of fees. He asked the next procedure, regarding fees he was charged.

Frank DeSmidt, of the Milpitas Rotary Club, announced the 8th annual community Pumpkin Patch starting on Friday and would run until October 30, featuring lots of fun for children.

Isaac Hughes, Milpitas resident, complained of interruption at meeting, pre-empting and censorship of his remarks, and other comments.

Vice Mayor McHugh requested that staff talk to the speaker about sports program fees, and then inform the City Council what could be done, prior to the next meeting.

ANNOUNCEMENTS

City Clerk Mary Lavelle announced information related to the upcoming November 6 municipal and presidential Election. One announcement was the available ballot box at the City Clerk's office for Vote-By-Mail voters.

Councilmember Polanski thanked the Community Advisory Commission, various staff and the public in attendance at the Emergency Preparedness Town Hall meeting held last Thursday, October 11 at the Community Center.

Councilmember Giordano requested additional speaking time to play a video presentation from a past City Council meeting showing speaker Isaac Hughes, and a second one referencing another meeting, when a speaker talked about restraining orders against him.

Vice Mayor McHugh requested a meeting on November 6 of the Milpitas Economic Development Corporation to address the status of the Milpitas Chamber of Commerce contract, which was currently in limbo. He wanted to know the status and a statement of alternatives.

ANNOUNCEMENT OF CONFLICT OF INTEREST

None was reported by Councilmembers.

Councilmember Giordano requested an opinion about agenda Item No. 3. She stated that Councilmember Gomez created a new campaign committee recently, and felt there was inherit conflict. She asked the City Attorney for an opinion.

Assistant City Attorney Bryan Otake responded that it required some consideration on his part. Ms. Giordano said she wanted, before any voting, for Council to take a hiatus from the issue, wait

for the FPPC to come back before the Council could vote. So, she asked for a ruling, to allow Councilmember Gomez to vote if he wanted to.

Councilmember Giordano moved, seconded by Vice Mayor McHugh, the action she stated above. The vote failed with only those two in favor, and three members opposed.

Vice Mayor McHugh asked if it was fair on whether there was a potential conflict or not. Mr. Otake noted there might be a conflict, and he said he required more facts and time to gather information to respond. He was not sure if the Councilmember was recusing himself or not, over any potential conflict of interest.

Attorney Otake asked Councilmember Gomez if he had any conflict of interest, and Mr. Gomez replied none at all.

APPROVAL OF AGENDA

Councilmember Giordano requested to remove Item No. 3, regarding possible reprimand, but there was a lack of support to do so. She asked several questions of the Assistant City Attorney. Councilmember Giordano again expressed why she wanted item no. 3 removed from the agenda and made a motion to do so. No second was offered to her motion.

Motion: to approve the agenda, as submitted

Motion/Second: Councilmember Gomez/Councilmember Polanski

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

CONSENT CALENDAR

Motion: to approve the Consent Calendar (items noted with *asterisk), as corrected on one item

City Manager Williams stated that on agenda item no. 16 (payment to Tri tech), the correct dollar amount to be paid was stated in the staff report (an incorrect amount was in the title only).

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

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

- * 1. Paving contract update Received staff report on compensation adjustment for the on-call pavement repair contract with DRT Paving & Grading Inc.
- * 2. Commission reappointment Re-appointed Madan Arora as Alternate No. 2 on the Recycling and Source Reduction Advisory Commission to a term that will expire in October 2014.
- * 4. Council Meeting Schedule in 2013 Approved the 2013 regular City Council meeting schedule, including cancellation of the first meeting in January 2013 (due to the New Year's Day holiday) and canceled July 2013 City Council meetings.
- * 5. Remove Commissioner Due to unexcused absences and per Commission by-laws, removed Ms. Maria Magdalena Ortega as a voting member of the Sister Cities Commission, thus creating a vacancy with an expiration date in September 2014.
- * 6. Adopt Streetscape Plan Adopted the plan for Transit Area Specific Plan Streetscape Elements.
- * 8. Adopt Ordinance No.76.15 Waived the second reading and adopted Ordinance No. 76.15, amending the Milpitas Municipal Code to change business license procedures.
- * 9. Resolution and SIA for Harmony Residential Adopted Resolution No. 8204 annexing properties known as Harmony Project into Community Facility District 2008-1. Approved and authorized the execution of a subdivision improvement agreement, storm management facilities operation and maintenance agreement, on-site private

utilities covenant agreement, right of way encroachment permit agreement. Approves the final map (Tract No. 10137) with the recommended street names and public improvement plans.

- *12. Change Order Authorized the City Engineer to execute a contract change order for Bay Cities Paving and Grading, Inc. in the amount not to exceed \$60,245.00 for Projects No. 4261, No. 4268 and No. 3403.
- *13. Contract with Burke, Williams and Sorensen Authorized execution of contract with Burke, Williams and Sorensen, LLP, in an amount not to exceed \$75,000 and approve appropriation in that amount.
- *14. Contract with Goldfarb & Lipman Authorized execution of Letter of Agreement and Guarantee for attorney services with Goldfarb & Lipman, in a combined payment and guarantee amount not to exceed \$60,000.
- *15. Report of Dempsey Rd. Water Main Repair Received Director's report of Dempsey Road water main emergency repair work. Approved a budget appropriation from the Water Fund in the amount of \$50,000. Authorized staff to pay Preston Pipeline for the emergency repair of the Dempsey Road water main in an amount not to exceed \$50,000.
- *16. Payment to Trittech Approved payment request to Trittech for the annual renewal of software support services for the 911 dispatch system at the Police Department for the not-to-exceed amount of \$96,772.17.

UNFINISHED BUSINESS One item approved on consent calendar.

REPORTS of OFFICERS One item approved on consent calendar.

3. Consider Council Action Mayor Esteves asked the Assistant City Attorney to address what the Council could do. Mr. Otake discussed providing adequate notice or description of what Councilmember actions were to be censured or reprimanded. He discussed liability if not properly noticed. So, the law urged no formal vote by the City Council at this meeting.

Councilmember Polanski read a statement aloud, including the oath of office and actions of Councilmember Giordano.

Vice Mayor McHugh was not comfortable with the action (reprimand) proposed, as it was not related to official duties as a City Councilmember.

Councilmember Gomez commended Polanski for bringing this item forward since it took courage. He had received comments from constituents. The matter was an embarrassment and he thought it needed to be addressed.

Mayor Esteves said the mailbox video surprised him at the last meeting. Mail should always be secured and action in the video was not acceptable, for elected official or any citizen.

The Mayor next allowed for public input.

Attorney Ed Kraus, representing Councilmember Giordano, a resident of Redwood City with office in San Jose spoke. Due process would be needed for any reprimand, and he was glad that the City Attorney agreed with that. No issues were mentioned on the agenda and the D.A. in August declined prosecution, with insufficient evidence.

Robert Marini, Milpitas resident, talked about obeying laws of the State of California, and felt the Council was not abiding the state constitution.

Isaac Hughes, Milpitas resident, discussed the right to aggrieve your government.

Mayor Esteves then stated there was no action to take on this item.

Councilmember Polanski said to the City Attorney, this needed to be continued to the next agenda. City Manager Williams referred to consulting with City Attorney Michael Ogaz. He

suggested the Council could continue this item until questions can be asked of Mr. Ogaz.

Motion: to continue this item to the next City Council meeting

Motion/Second: Councilmember Polanski/Councilmember Gomez

Vice McHugh commented that the Council simply note receipt and file.

Motion carried by a vote of: AYES: 3
NOES: 2 (Giordano and McHugh)

NEW BUSINESS

Three items were approved on the consent calendar.

ORDINANCES

One ordinance was adopted on the consent calendar.

7. Ordinance No. 283

Mayor Esteves addressed the City Council from the speaker podium. He gave a presentation with power point slides to the Council about economic issues, police officer compensation, salary increases, 7% cut with furlough, and police services discontinued in the last budget cycle. He sought more concessions from the police employees.

The Mayor next allowed for audience comments.

Robert Marini, Milpitas resident, asked if a notice was sent to the public, then include what it would cost in taxes and what other fees residents would have to pay.

Carol Kassab, Milpitas Chamber of Commerce, what would the vote needed be for approval at an election? Attorney Otake replied a simple majority of the vote.

Isaac Hughes, Milpitas resident, felt if this matter went to the public for a vote, it would be heavily influenced from parties on both sides.

Assistant City Attorney Bryan Otake read aloud the title of Ordinance No. 283, "An Ordinance of the City Council of the City of Milpitas Adding Section 12, Outsourcing of Sworn Safety Personnel, to Title VI Personnel, of the Milpitas Municipal Code."

(1) Motion: to waive the first reading beyond the title of Ordinance No. 283

Motion/Second: Vice Mayor McHugh/ Councilmember Giordano

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

(2) Motion: to introduce Ordinance No. 283

Motion/Second: Councilmember Polanski/Councilmember Giordano

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

RESOLUTIONS

1 on consent

10. Resolution – Training/ Education Costs

City Manager Tom Williams explained the request of the Council to adopt the proposed resolution to change rules on educational reimbursements to City Councilmembers.

Councilmember Polanski responded that it was based on a personnel policy in effect for many years which she was surprised to learn and felt it should be removed.

The City Manager replied with changes that could be made in personnel rules.

Councilmember Giordano stated that the Council did promote education and training for all employees, including university education as recently displayed in an email.

Mayor Esteves asked if staff could provide information on any of the five Councilmembers who were reimbursed in the last two to three years, and the City Manager said he could.

Councilmember Polanski wanted to direct staff further on a standard operating procedure to add no reimbursement for any expenditure if not turned in within 30 days of the end of a fiscal year.

Vice Mayor McHugh agreed the current process can stand some refinement.

Mayor Esteves felt the policy was wrongly implemented for a Councilmember, and that they should attain credentials before running for elected office.

Councilmember Polanski had proposed changes, wanting the policy changed to remove officials (as in the draft Resolution) and it should be in the SOPs that there would be no retroactive reimbursements. Those must be completed within the year expended, within 30 days of the end of a FY, and put this requirement into the City Council Handbook. She moved the above action, which was second by Councilmember Gomez.

City Manager Williams recommended separating City employees from elected officials. Both Councilmembers Polanski and Gomez agreed. Appointed officials such as Commissioners would go with elected officials. The only appointed employees are the City Attorney and the City Manager.

Next the Mayor allowed for public input.

Antwon Snogrow, Milpitas resident, said this was good business of government. What was more personal could be taken care of behind the scenes.

Isaac Hughes, Milpitas resident, disagreed with the last speaker. He displayed some records of past Councilmember reimbursements.

Following the speakers, Mayor Esteves called for a vote on the motion given above.

Motion: to adopt Resolution No. 8205 amending the Personnel Rules and Regulations eliminating elected and appointed officials' reimbursement for educational training, and further to remove this topic from the City Council Handbook, and include in any Standard Operating Procedure a requirement for reimbursement within the year of the training

Motion/Second Councilmember Polanski/Vice Mayor McHugh

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

11. Resolution – Ban Lodging Cost Reimbursement

Councilmember Giordano explained her rationale for this request, based on some research she had done past travel costs. She desired a change in the policy to restrict reimbursements on hotel costs farther than 60 miles beyond Milpitas. She moved adoption of a proposed resolution, however no second was offered so the motion died.

Vice Mayor McHugh stated the current policy was adequate and recommended maintaining the status quo.

Next, the Mayor allowed for speaker from the audience.

Resident Isaac Hughes addressed the City Council with various remarks.

Motion: to note receipt of the report (no Resolution was voted upon)

Motion/Second Councilmember Polanski/Councilmember Gomez

Motion carried by a vote of:

AYES: 4

NOES: 1 (Giordano)

BIDS & CONTRACTS

Three items were approved on the consent calendar.

DEMANDS

Two payments were approved on the consent calendar.

ADJOURNMENT

Mayor Esteves adjourned the City Council meeting at 10:36 PM.

*Meeting minutes respectfully submitted by
Mary Lavelle, City Clerk*