

Draft **MEETING MINUTES**
CITY OF MILPITAS

Minutes of: **Joint Meeting of Milpitas City Council and Milpitas Housing Authority**
Date: **Tuesday, April 2, 2013**
Time: **6:00 PM**
Location: **Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas**

ROLL CALL

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

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

ABSENT: None

CLOSED SESSION

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

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

ANNOUNCEMENT

No announcement out of Closed Session.

PLEDGE

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

INVOCATION

Councilmember Montano offered a prayer from St. Francis.

MINUTES

Motion: to approve meeting minutes of March 19, 2013 City Council meeting

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

SCHEDULE OF MEETINGS

Motion: to approve Council Calendar/Schedule of Meetings for April 2013

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

PUBLIC FORUM

Madison, a young lady from Center Stage Performing Arts theatre group, requested that the City Council sponsor its upcoming event by supporting the June 2 "fun run" at Gill Park. Another girl named Logan of the children's theatre encouraged support of the run.

Lisa Moreno, parent of one of the girls, addressed the City Council seeking support for the Fun Run and for sponsors. Residents may call 408-592-0285 Lisa Baker for more info.

Councilmember Gomez wanted to consider a future agenda item for a grant for the theatre program. Mayor Esteves responded that new rules were under development and so, such requests were on hold until finalized. He was happy to consider a request after that.

Robert Marini, Milpitas resident, displayed information about sewer rate calculations. He complained of no response from the City Attorney and violations of state law.

Mayor Esteves asked the City Manager to explain the recent lawsuit filed against the City by the Count of Santa Clara, and he did so by reviewing redevelopment law changes and dissolution, audits by the state, protective measures such as formation of the Economic Development Corporation, and state legislative actions to make the law retroactive toward cities.

Rob Means, 1421 Yellowstone, spoke of the crossing of the railroad tracks and a comment about lack of volume of traffic. He commented on the possible costs per resident of the transportation improvements in Milpitas.

Amita, a Milpitas resident since 1988, came to complain about the smell in the City. Since this subject was on the agenda, she was invited to speak later on the agenda.

ANNOUNCEMENTS

Mayor Esteves reported that this was a joint meeting of the Milpitas Housing Authority and the Milpitas City Council.

Vice Mayor Polanski announced that the City and the Fire Department would hold the next SAFE training class over three Saturdays this spring at Fire Station 1 on Main Street. All residents were encouraged to attend training to prepare for emergencies.

Mayor Esteves congratulated Nanosys, a new technology manufacturer that opened recently in Milpitas. He thanked city staff including Keyvan Irannejad and Albert Zamora for their actions in helping that business open up. The Mayor also said "Happy Holi" to local Indians and Indian American residents for their celebration.

ANNOUNCEMENT OF CONFLICT OF INTEREST

Councilmember Giordano asked about disclosing campaign contributions and the process, per the new ordinance. City Attorney Mike Ogaz responded it would go into effect next month.

Councilmember Gomez said he would abstain from voting on agenda item no. 8, an amendment to an agreement with CalRecovery Inc.

APPROVAL OF AGENDA

Motion: to approve the agenda, as amended

City Manager Tom Williams requested to remove agenda item no. 5 regarding the Emergency Operations Plan, in order to allow time to take the plan to the Emergency Preparedness Commission and then to return to City Council.

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

CONSENT CALENDAR

Motion: to approve the Consent Calendar (items noted with *asterisk), as amended

Councilmember Giordano asked to remove item no. 3 (odor report) to allow public to speak on it.

Councilmember Montano wished to remove item no. 6 on CopVu cameras for Police Department

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

* 4. Commission Appointments Affirmed the Mayor's recommendations for the following appointments:

Arts Commission/Public Art Committee

Newly appointed Marsha Tran as Alternate No. 2 to a term that will expire in Oct. 2013.

Community Advisory Commission

Appointed Ray Maglalang as a voting member to a term to expire in January 2015.
Appointed Van Lan Truong as Alternate No. 1 to a term to expire in January 2015.
Appointed Jacqueline Holland as Alternate No. 2 to a term to expire in January 2015.
Newly appointed Willy Wong as Alternate No. 3 to a term to expire in January 2014.

Economic Development Commission

Newly appointed Mark Wong as Alternate No. 2 to a term to expire in April 2014.

Senior Advisory Commission

Newly appointed Patrick Yung to Alternate No. 2 to a term to expire in December 2014.

- * 7. Award Contract to DRT Grading & Paving
Awarded construction contract to DRT Grading & Paving Inc. for the Park Renovation 2011, Project No. 5091, in the amount of \$109,510.20.
Approved a budget appropriation of \$77,777.78 from the Community Development Block Grant (CDBG) into the Park Renovation 2011, Project No. 5091.
Authorized staff to execute change orders up to \$30,000 for the Park Renovation 2011, Project No. 5091.
- * 8. Amendment to Agreement with CalRecovery Inc.
Authorized the City Manager to execute Amendment No. 3 to the agreement with Cal Recovery Inc. for solid waste consulting services for an amount not to exceed \$20,000.

Vote was four (4) in favor and one (1) abstain (Gomez).
- * 9. Amendment to Agreement with County
Authorized the City Manager to execute Amendment No. 1 to the agreement with Santa Clara Co for FY 2013-14 Countywide Household Hazardous Waste Collection Program.
- *10. Agreement with Fireworks Vendor for 4th of July
Authorized the City Manager to execute an agreement with Pyro Spectaculars for the not-to-exceed amount of \$21,600 for annual 4th of July 2013 fireworks display in Milpitas.
- *11. Emergency Repair of Generator Fuel Lines
Received report from the Public Works Director of emergency repairs and equipment replacement for the Police/Public Works building emergency generator fuel lines; and authorized staff to pay invoices for the repair work performed on the fuel lines.

PUBLIC HEARINGS

1. Public Hearing on New Billboard Signs at I-880
Senior Planner Sheldon Ah Sing provided background on actions to date on the proposed new billboard signs along Interstate 880 freeway, including lighted electronic signs. The current project was brought forward by applicant Clear Channel for signs along California Circle in two locations. All operations for the new signs were in compliance with local and state laws.

Mayor Esteves asked what was the closest distance of a sign to a residential home and Mr. Ah Sing replied, about 900-1000 feet. The Mayor inquired about outreach to nearby residents, and for the analysis done to compare the public benefit of the signs versus any negative impacts. He wished to know who or which companies would be able to advertise on the signs, and if they would benefit Milpitas business. He asked questions about regulating content of the ads, to which the City Attorney responded. The City must apply the local Milpitas Municipal Code and all provisions of the development agreement to ensure compliance. Staff suggested the Mayor may hear from the operator how this was done in other communities where signs were already in place.

Councilmember Gomez commented that this was the not the first time this issue was before Council. In fact, they had approved another billboard sign project. He asked staff about land use in this area, brightness of the signs, and light levels at night.

Robert Hatton, a representative of Clear Channel Outdoors, responded to Mr. Gomez stating that the brightness adjusted every few seconds based on time of day, weather, etc. by technology. He responded to the Mayor's inquiry about types of ads: no cigarette ads

were legally permitted in California, no lewd/offensive material, and the company would be pleased to consider what the community would like to see advertised in Milpitas.

Councilmember Montano asked the height of other nearby signs. Mr. Ah Sing noted the new billboards would be only five feet higher than current monument sign at California Circle. She sought to have the wording "Gateway to Silicon Valley" on the sign itself, and strongly recommended that to the Clear Channel representatives.

Vice Mayor Polanski discussed the signs as a plan to benefit McCarthy Ranch and other shopping plazas in Milpitas, so that drivers would not simply drive by.

Mayor Esteves asked for the term "adjusted gross income" to be defined in the agreement, since the 10% revenue to the City was based on it. City Manager Williams clarified that the funds would be based on gross revenue (not income).

Next, the Mayor invited the applicant Clear Channel to the speaker's podium. Mr. Hatton of Clear Channel Outdoor thanked the City planning staff and looked forward to the new signs in Milpitas. He described the joint venture with McCarthy Ranch called Milpitas Sign Co. LLC. He responded to the Mayor's questions about types of ads and desire for Milpitas businesses to be represented. While the Mayor sought to have a preference for Milpitas businesses as advertisers on the sign, Mr. Hatton explained business decisions on ads bought and sold around the country, by Clear Channel.

City Manager Williams offered a suggestion to add into the Development Agreement, that when there was no more vacant space on a billboard, then a Milpitas company could get the first right of refusal, as long as the firm paid current market rates. Mayor Esteves responded that he did want to add that to the agreement, showing intent for support of local Milpitas businesses.

Vice Mayor Polanski discussed the regional draw for the Great Mall and McCarthy Ranch, and to consider the diversity of population living here. She supported the overall reasons and goals for the signs within the city.

Councilmember Gomez suggested revisiting the "Gateway to Silicon Valley" concept. The City would have some community space on the sign, he confirmed.

Councilmember Montano supported comments from Vice Mayor Polanski suggested for the "Gateway" language, but did not support the City seal on the sign.

Next, Mayor Esteves opened the public hearing and invited speakers.

Robert Marini, Milpitas resident, wanted to know who was paying for the construction and how much money the City would get.

Bill Ferguson, Rivera Street, read from the Environmental Impact Report about significant effects of the signs when installed. He asked Council to vote no. If they were favorable, he said they could make the contract stronger. He was concerned about when the signs got runned down into the future, so that the City should not have to pay for removal. He asked to add into the contract that the landowner was responsible in that case. He complained about the formation of the LLC, and lack of liability for the sign.

Mayor Esteves asked City Attorney Ogaz to respond, about the LLC and the liability to Clear Channel and McCarthy Ranch, as partners of the new company. There were further comments made by the City Manager in explanation, including the helpful use tax revenue to the City that was anticipated. Mr. Williams also suggested additional conditions of approval to be added to the site development plan.

Christine Vallis, Milpitas resident, lived in the nearby neighborhood. That was too many signs for Milpitas she felt, along I-880. Distance between the two signs as proposed was

only 0.4 miles in a very congested area. The light and glare from the signs would be bad, and she would be able to see it from her house. Milpitas would become “NASCAR” by the bay. She said to limit the number of signs to two total, but if not, then consider other commercial sites in Milpitas.

Rodney Smith, 388 Montecito Way, was a member of his Homeowners Association board, and took an objective view of the plan and the EIR. Signs would be visible to current homeowners and to new homes proposed to be built close to the signs. Property values would go down if lighted billboards go up right next to their bedroom windows. Why not place them across the highway on I-880 west side, he asked.

Rob Means, 1421 Yellowstone resident, did not agree there would be a need to prioritize Milpitas businesses. The corporate goal was for making money while there a low likelihood for Milpitas businesses competing for space on the sign.

(1) Motion: to close the public hearing

Motion/Second: Councilmember Giordano/Councilmember Gomez

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

Councilmember Giordano had no problem with the LLC formation of the company, as it was a common practice. As far as the visual image from the signs to houses, he agreed this was the place to put it, not – for example - next to I-680 with homes built right up next to the freeway. When the sign became obsolete, demolition would be a question and would be hard to enforce.

City Attorney Ogaz responded that within the development agreement, there were specific default procedures identified, to follow. City Manager Williams commented on the site development agreement, they could add a requirement to remove the sign if it was inoperable and could post a bond for that step, if Council desired.

Councilmember Gomez responded to the Mayor, that he felt confidence in the LLC – including the known McCarthy family, a contributor to the community over many years.

Vice Mayor Polanski was not concerned about the sign when obsolete. She supported McCarthy as one of the partners of the Milpitas Sign Co. Her view was that the new lighted signs would help with economic development in the City.

Mayor Esteves termed this a “good project” as it was the face of Milpitas. It was good as a way to support local business, including the opportunity for them to be competitive. The standard of maintenance was very important. Residents lived in a city, in Silicon Valley, so having the sign 1,000 feet from homes was a compromise.

Mr. Williams commented on tax revenue received from property tax of homeowner versus revenue to be generated by the billboard signs directly to the City of Milpitas.

(2) Motion: to waive the first reading beyond the title of Ordinance No. 38.807

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

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

City Attorney Ogaz read aloud the title of Ordinance No. 38.807 “An Ordinance of the City Council of the City of Milpitas Approving a Development Agreement between the City of Milpitas and Milpitas Sign Company LLC.”

(3) Motion: to introduce Ordinance No. 38.807

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

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

(4) Motion: to adopt Resolution No. 8243 approving Site Development Permit No. SD 12-0007, a Development Agreement and certifying the Final EIR for the I-880 Milpitas Billboards project and adopting related mitigation findings, findings regarding alternatives, and a statement of overriding consideration pursuant to California CEQA

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

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

Councilmember Montano repeated her strong desire to include "Gateway to Silicon Valley" listed on the new signs.

2. Recreation New Transaction Fee

Recreation Supervisors Jaime Chew and Stephanie Douglas explained the request for a new fee related to implementation of new registration software for Recreation programs called ActiveNet by Active Network of San Diego, a hosted technology on a cloud network. The current aim was to go live with ActiveNet in January 2014. Ms. Chew explained the 1.5% transaction fee would essentially be a pass-through to customers, on all fees charged as listed on the Recreation Master Fee schedule. Staff also provided comparison data with neighboring cities.

Vice Mayor Polanski summarized what the women presented in the proposal, which she understood clearly and did support the change needed.

Councilmember Montano wondered what would happen to the old (existing) software. Staff explained they would purchase a completely new product, new software, since the old one became obsolete. The Councilwoman asked staff about revenues and how the department was performing financially. Ms. Chew responded that Recreation had brought in slightly more revenues in spring program registrations, so far.

City Manager Williams remarked that the goal for most city programs was to be cost recoverable, with Recreation currently at nearly 50-60% cost recovery. Finance Director Emma Karlen noted that the goal in the Milpitas Municipal Code was 50-75% cost recovery for Recreation services.

Mayor Esteves asked for further explanation of the software costs and why ActiveNet was advantageous. He asked questions about who owned the registration data and who maintained its confidentiality. Staff replied that the City owned the data. He cared that it was protected from identity theft, and asked about the length of the contract. Staff reported that there was no ending date to the contract.

The Mayor opened the public hearing.

Robert Marini, Milpitas resident, commented about the number of residents registering for classes on the web and the cost.

(1) Motion: to close the public hearing

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

(2) Motion: to approve the software upgrade to ActiveNet by Active Network for Recreation Services, and to adopt Resolution No. 8244 for the addition of a new 1.5% Transaction Fee applied to all Recreation programs and services

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

HOUSING AUTHORITY

*HA1. Resolution and Actions for Demolition of McCandless Buildings

Adopted Joint Resolution No. 8246 / HA 8 approving a loan from the Housing Authority to the City of Milpitas, and authorized the City Manager to execute an agreement with DR Horton for the selection of Gilroy Construction, Inc. for demolition of City buildings at 1650-1690 and 1740-1830 McCandless Drive at a total cost not-to-exceed \$621,500.

UNFINISHED BUSINESS

3. March Odor report

Acting City Engineer Kathleen Phalen presented an oral report on current odor control statistics. 373 complaints were logged by the City via phone and web odor reporting systems, started in May of 2011. On the Bay Area Air Quality Management District hotline, 38 odor complaints were made in March via 1-800-334-6367.

Mayor Esteves invited audience members to speak.

A resident since 1988, Amita Gundal, made a request to the City Council for the City to create a mobile application so people could report wherever they were located, when they smelled a bad odor. This would help the reporting to be more accurately reported by more people in real time. She felt the lawsuit would be stronger too with more data points. What was the plan for what to do about the odors that were reported, she asked.

Mayor Esteves requested staff to respond. The City Manager said the City Attorney should respond first since the City was in litigation. Currently, the City filed a lawsuit challenging the environmental document for expansion of the landfill, to oppose the increased height of the landfill as proposed. Settlement discussions were occurring. It did not relate to the San Jose Water Pollution Control Plan, for which there was a current Environmental Impact Report for its expansion, going around for comments. Mr. Williams noted the landfill was located within the City of San Jose and had a permit to operate, so Milpitas sued that city, which regulated the landfill.

Vice Mayor Polanski thought the resident idea for a computer mobile application was an excellent one. She stated that the question "what does the odor smell like?" was the dumbest question asked, in the telephone reporting system.

Councilmember Montano thanked the City staff for the data. She was curious what the City would do with that data, while she understood limitations on any answer due to current litigation (could not respond).

Motion: to receive the March 2013 odor control report from staff

Motion/Second: Councilmember Giordano/Councilmember Gomez

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

REPORT OF MAYOR

One item approved on consent

NEW BUSINESS

