

**MEETING MINUTES  
CITY OF MILPITAS**

**Minutes of:** Regular Meeting of Milpitas City Council and the  
Successor Agency to the Redevelopment Agency  
**Date:** Tuesday, November 18, 2014  
**Time:** 7:00 PM  
**Location:** Council Chambers, Milpitas City Hall,  
455 East Calaveras Blvd., Milpitas

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**CALL TO ORDER**

Mayor Esteves called the meeting to order at 7:00 PM. The City Clerk noted the roll.

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

Councilmember Gomez was not present at the meeting in person. He participated by telephone conference from his location in Vallejo, CA for both the Closed and Open sessions of the City Council meeting.

**ABSENT:** None

**CLOSED SESSION**

City Attorney Mike Ogaz announced out of closed session that the Council reached agreement with the Fire union for a new Memorandum of Understanding with IAFF Local #1699. Terms included: continuance of 3% pension share of current 7% PERS contribution by members, a 4% increase in January of 2015, a 2% increase in January of 2016 and 2% in July 2016. There will be an overtime cap of \$1 million per year and the ability to brownout a fifth unit if that cap is exceeded, paramedic status will be conferred to all certified paramedics with minor exceptions, and one time payments of \$5000 per member in December of 2014 and same \$5000 per member in December of 2015, and dismissal of all lawsuits and administrative charges. It would be a 3-year contract approved by a vote of 5 - 0.

**PLEDGE**

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

**INVOCATION**

Mayor Esteves offered a prayer to start the meeting.

**MEETING MINUTES**

Motion: to approve the minutes of the November 4, 2014 City Council meeting, with one edit

Motion/Second: Vice Mayor Polanski/Councilmember Montano

Councilmember Montano requested to edit the word "simple" to "simply" at the top of page 2.

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

**SCHEDULE OF MEETINGS**

Motion: to approve Council Calendars/Schedule of Meetings for November and December 2014, as amended

City Manager Tom Williams announced that the Planning Commission meeting later this month was moved to Monday, November 24 (from usual Wednesday) at 7:00 PM.

Also, the regular meeting of the Sister Cities Commission of November 27 was moved earlier to Thursday, November 20 at 6:00 PM in the 4<sup>th</sup> floor conference room at City Hall.

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

**PRESENTATION**

Mayor Esteves presented a certificate to Milpitas Unified School District for its support of the Inter-School Science Fair, accepted by Dr. Sheila Murphy-Brewer, Pomeroy Principal.

Student Alan Pham from Milpitas High School expressed thanks to the Mayor and Council for recognizing great teachers in Milpitas, and the Mayor support for the math program he and his sister initiated for younger students in Milpitas.

**PUBLIC FORUM**

Three girls from Center Stage Performing Arts invited the City Council and public to their upcoming Charlie Brown theatre show, which was scheduled this month next door at the Community Center. Participants from Center Stage would also perform at the City’s upcoming December 1 Holiday Tree Lighting event.

Robert Marini, resident, spoke about utility fees, and high rates.

Mo from Santa Cruz, was speaking as a friend of Peter Nelson, and asked for fees to be reviewed for fire inspections of property in Milpitas. He would like to work with the City Manager’s office for a review to figure out if it was a tax. The City Manager responded that he did already schedule an upcoming meeting at the men’s request.

Vice Mayor Polanski confirmed the Council policy to review fees every year, as part of the budget process, too see how those fees were working for the city annually.

Kebil Parea, of Boy Scouts Troop 92, referred to theft of the Troop’s trailer, and announced they had surpassed their goal of raising \$3000 to replace the trailer, with the most generous donors from public safety groups. Boy Scouts conducted fundraising at the recent Veterans Car Show and a pancake breakfast held at Mount Olive Church.

**ANNOUNCEMENTS**

Councilmember Montano announced activity of the Santa Clara Valley Water District, and she distributed handled, re-usable shopping bags to the Mayor and City Councilmembers. Tours for the public are offered of various Water District facilities.

Mayor Esteves asked for three items to go onto a City Council agenda: (1) a review of the Town Center ordinance to know if a change is needed; (2) a review of the ordinance that does not allow conversion of commercial (job sites) to residential sites, as he thought it did not cover many job sites in City; and, (3) to announce, based on experience of last election, suggestion of a campaign finance subcommittee to see if improvements were needed to address issues in the last election.

**ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**

City Attorney Ogaz asked City Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. No conflicts or contributions were reported. Councilmember Giordano had asked him to look into any conflict on agenda item no. 3 (re: MCTV) and Mr. Ogaz said she did not have a conflict and could participate.

**APPROVAL OF AGENDA**

Motion: to approve the meeting agenda as submitted

Motion/Second: Vice Mayor 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) with no changes

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

- \* 5. Bullet Proof Vests grant Accepted the 2014 Bulletproof Vest Partnership (BVP) grant and approved an appropriation in the amount of \$8,423.61 into the Police Department's operating budget
- \* 6. Resolution Adopted Resolution No. 8422 approving the updated Adopt-A-Spot Program for partnership with community organizations for the enhancement and beautification of community parks and open spaces.
- \* 7. Resolution Adopted Resolution No. 8423 awarding a construction contract to Suarez & Munoz Construction, Inc. and authorizing the City Manager to execute the contract for the McCarthy Boulevard Lighting & Landscape Improvements Phase I, Project No. 3402, in the amount of \$334,710; and, authorized the Director of Public Works to negotiate and execute change orders for McCarthy Boulevard Lighting & Landscape Improvements Project, in the cumulative amount not to exceed \$52,000.
- \* 8. Resolution Adopted Resolution No. 8424 approving the Memorandum of Understanding with the Milpitas Police Officers Association (POA) covering the period of January 1, 2015 through December 31, 2016.
- \* 9. Amend Employment Agreements Approved amendments to the employment agreements with City Manager Thomas C. Williams and City Attorney Michael J. Ogaz.
- \*10. Amend Agreement Approved the sixth Amendment to the agreement with Jarvis, Fay, Doportto & Gibson, LLP, to add \$25,000 for additional legal services.
- \*11. Amend Agreement Approved Amendment No. 1 to the agreement with JJR Construction increasing the amount of the agreement from \$150,000 to the not-to-exceed total amount of \$281,000, for on-call sidewalk, curb, and gutter repairs for the period of March 21, 2014 to March 20, 2015.
- \*12. Amend Agreement Approved Amendment No. 1 to the consultant agreement with RMC Water and Environment, Inc. extending the term from December 31, 2014 to December 31, 2017, for on-call Water and Sewer System Hydraulic Modeling for private jobs and various Capital Improvement Projects.
- \*13. Approve Agreement Approved a consultant agreement with Bartle Wells Associates for the Financial Utility Master Plan Update, Projects No. 3701, No. 6106 and No. 7111 in an amount not to exceed \$105,140.
- \*14. Approve Agreement Approved a consultant agreement with Circlepoint in the not-to-exceed amount of \$73,753, and for a term from November 18, 2014 to November 18, 2015 for CEQA clearance and bridge scour repair environment and permitting services, Project No. 4271.
- \*15. Approve Agreement Approved a consultant agreement with Hohbach-Lewin in the not-to-exceed amount of \$52,000, and for a term from November 18, 2014 to November 18, 2015 for bridge scour repair design services, Project No. 4271.
- \*16. Approve Agreement Approved a consultant agreement with LTN, Inc. for the not-to-exceed amount of \$36,900, and for a term from November 18, 2014 to November 18, 2015 for soundwall renovation design services, Project No. 4267.

**PUBLIC HEARINGS**

- 1. South Main Senior Lifestyles building at 1504 – 1620 South Main Street Senior Planner Shaunn Mendrin reviewed details of the proposal for a senior assisted living facility on So. Main Street, including a density bonus, units for low income seniors and a swimming pool on site in the transit area, near the future BART station. He detailed the site design and other unique elements of the senior residence. The applicant sought an exception to the urgency ordinance on water use and the prohibition on new swimming pools and potable water use on landscaping. The developer additionally sought a waiver of park in lieu fees.

Councilmember Montano asked about the PG&E easement and wanted confirmation it was for gas. Staff explained the location of the easement and how that was accommodated with new construction. She asked about bus transit and movement at entry of the facility.

Councilmember Giordano felt this was an exciting unique new type of senior living, and she was glad there would be low income units included. She wanted to know if those would be reserved first for Milpitas residents, and Housing Planner Felix Reliford said yes.

Mayor Esteves asked questions about Phase I and II. He wanted to know if both would definitely get built since Phase II called for many more low income units when built than Phase I. City Manager Williams said the deed restrictions would go with the land if another developer came in for Phase II, based on the Development and Disposition Agreement (DDA). The City Manager commented further in response to the Mayor.

Joe Callahan, developer of South Main Senior Lifestyles project, noted that the DDA would be recorded, and run with the land. If he failed to build Phase II, the next one would have to abide by it. The City had many protections in the DDA, he agreed with the City Manager.

Mayor Esteves next asked about park-in-lieu fees that would be paid back if not used for the senior living facility when built. Would the applicant give back the land to the government if the senior housing was not built, he wondered. Mr. Callahan responded the arrangements for the land were recorded in the DDA.

Councilmember Montano expressed her view that 20 affordable housing units should be in Phase I. Mr. Callahan gave further explanations of the financing and plans for the building, where it would be too expensive to build more than ten low income units in Phase I. She wanted a park on the site too.

The Mayor asked Mr. Callahan why he wanted to waive park in lieu fees. Mr. Callahan believed it was not warranted, since the much older seniors would not likely use a park, due to limited mobility and average age of 87.

Councilmember Montano agreed with the Mayor about the need for a park on site. She asked about electric vehicle access including for paramedics.

Next, Mayor Esteves opened the public hearing

Robert Marini, Milpitas resident, asked what were the park-in-lieu fees and felt the number of very low income units was too low at 5%. What was the cost of a low-income unit there and the cost of market rate units to buy one?

Mr. Callahan responded to the speaker: \$71 million was the cost to build, \$360,000 per unit. Affordable units were to be built to the same standard as market rate. Park in lieu fee would be approximately \$2.3 million total to the City. However, City staff expressed the estimate was \$1.4 million (or less) for the fee, with 0.5 acre parkland. 30% of the market rate was a rough estimate of the cost to purchase a low income unit.

Barbara Ebright, Milpitas resident, inquired about trees. She was worried about future problems with tree roots coming up in the sidewalk and covered areas.

(1) Motion: to close the public hearing

Motion/Second: Vice Mayor Polanski/ Councilmember Giordano

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

Councilmember Gomez asked the City Manager about affordability and if that approved in the DDA already. Staff agreed it was. He was grappling with the park in lieu fee.

Vice Mayor Polanski was excited to see the project coming into Phase I. This was something needed in our community that Milpitas did not have. The community needed the services it would offer. Courtyards allowed for outdoor space for the residents as designed, with many small parks in the City.

Councilmember Montano, on the park fees, asked if the PRCRC reviewed this project and lack of parkland? Staff responded no. She asked about art on site. Mr. Williams responded that Phase II showed a town square, park and some art. Phase I focus was on congregate care for those in need of the assisted living. She asked about potable water use for landscaping (v. opportunity to use newly available recycled water).

Councilmember Giordano spoke about the park in lieu fee, and wondered if staff had looked at parks and open space available, while this project was unique for the demographics. Keeping costs down, and the rents down, was needed so she urged not adding costs. She agreed with Mr. Gomez on waiving the park in lieu fee as proposed.

Mayor Esteves suggested maybe a maximum amount for the park in lieu fee total (instead of a waiver). He was supportive of the project and understood why there were only ten units for low income in Phase 1. He wanted the developer to commit and build Phase 2.

Councilmember Montano felt this was a great project that was really needed in Milpitas. She still wanted a small park included. She was happy the developer planned for the future regarding use of the purple conduit for non-potable water for landscaping.

(2) Motion: to adopt Resolution No. 8420 approving the Vesting Minor Tentative Map No. TP14-0001, Site Development Permit No. SD14-0006, Density Bonus No. DB 14-0001, waiver of parkland in-lieu fees, drought restriction exception, and public street maintenance agreement for the construction of Phase 1 of the senior assisted living and congregate care facility including a new four-story residential building with 199 rental units including 10 very low-income units and associated site improvements at 1504-1620 South Main Street in Milpitas, known as South Main Senior Lifestyles

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

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

Mayor Esteves stated that he opposed only the park in lieu fee waiver, while otherwise he was supportive of the new senior development.

The City Council took a short break at 8:48 PM and reconvened near 9:00 PM.

## 2. iStar project

Planning Director Steven McHarris introduced contract Planner Lisa Costa-Sanders who reviewed details of the 1210 California Circle project for residential development of townhomes, upon the re-zone of the site from industrial to multi-family residential. She reported that the Planning Commission recommended denial on a 3-2 vote on the project where 144 units were proposed. She provided images of the architectural styles and identified community benefits of the project.

Mayor Esteves asked about traffic, with the noted increase. Traffic consultant Jane Clayton responded that the traffic impact study found there would be no impact on am/pm peak hour traffic even though over 24 hours, there would be more trips generated in total. New trip generation total would be 60 additional per day. That would be less than if the property was continued to be used for commercial/industrial use, as in current zoning.

The Mayor asked questions about benefits of the project, identifying specific comments in the staff report.

A representative from Keyser Marston firm came to the podium to discuss the fiscal impact analysis of the project. She noted a \$100,000 net fiscal improvement per year if the residential development was built v. \$40,000 to City if a commercial use.

Mayor Esteves asked staff about how the odor issued would be addressed. Mr. McHarris replied that it would be revealed to purchasers, as a condition of approval.

Councilmember Giordano asked if the Trumark company (project next door to this site) was going to disclose the odor issue and staff replied yes. Ms. Giordano liked this project, it agreed with her vision for area and it was compatible to Trumark development.

Councilmember Montano inquired about new crosswalks with attractive brick material, and their locations. A sense of continuity would be developed if this site was built. She supported the idea of more VTA buses at that location.

Mayor Esteves invited the developer to the podium. Eric Sygar, developer of the iStar residential project at 1210 California Circle, addressed the City Council about the site that his company had owned since 1996, among other sites in Milpitas.

Next Harry Burroughs, consultant, confirmed market realities discussed by Mr. Sygar. He described some of architecture and details of the project. He asked for one change to conditions of approval about existing utility structures, since it was problematic to underground all utility boxes so he sought flexibility on that possibility instead of being a requirement.

Councilmember Montano wanted to see use of non-potable water with the new purple conduits for future watering of landscaping at the site.

Mayor Esteves opened the public hearing

Robert Marini, resident, spoke of hypocrisy of the City. There was a major drought in our state and Council was dropping problems on the residents. This project would yield traffic as would be a huge impact despite what the consultant reported.

Jo Kaufman-Nunez, resident, lived in California Landing Villas across from the proposed project and was on the HOA board. She looked forward to the project being approved, and supported the concept of “continuity” as Councilmember Montano mentioned. It would bring new life in a sad area of City.

Bob Nunez, a California Landing resident, said the best use of the land was for the iStar project now. He was looking forward to approval.

Dave Makower, resident nearby to the project, asked City Council not to approve the project. He was concerned about too many units, and objected to the mitigated negative declaration’s assessment of the predicted low number of new students.

A man who lived nearby, felt this was going in the right direction and supported it.

Jennifer Columbine, resident and head of Milpitas Family Giving Tree, spoke about the character of the company proposing this project. iStar offered the company’s goodwill by helping her agency over the years. This was a long time, committed company in this community. She supported new housing at the site even though her non-profit would no longer be able to use the empty commercial building there.

Voltaire Montemayor, resident, favored the residential development.

Prakash Patel, part of the BAPS temple next door to 1210 California Circle, was fully supportive of the project and looked forward to housing at the site. People drove too fast there now, with it undeveloped, so new lighted crosswalks would help.

(1) Motion: to close the public hearing

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

Councilmember Montano responded on the school capacity issue, that there was room for more students who would go to Weller Elementary (not Pomeroy). The site would benefit the existing community by bringing up home values. She liked the project as long those crosswalks with beeping lights were installed as described.

Mayor Esteves was hesitant to approve any project 100% residential with all that was going on in the Transit Area. He wanted to see more of a commercial district at California Circle since there were enough homes coming to Milpitas already.

(2) Motion: to adopt a Resolution No. 8421 approving General Plan Amendment No. GP14-0003, Site Development Permit No. SD14-0013, Planned Unit Development No. PD14-0001, and Major Vesting Tentative Map No. TM14-0001 and adoption of the Initial Study and Mitigated Negative Declaration (Environmental Assessment No. EA14-0006; and including one change to Conditions of Approval requested by the applicant, regarding the request to underground utility boxes

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

City Attorney Mike Ogaz read aloud the title of Ordinance No. 38.818, "An Ordinance of the City Council of the City of Milpitas Amending the City's Zoning Sectional Map, Changing the Land Use Designation of 9.45 Acres from Industrial Park (MP) to Multi-Family High Density Residential (R-3) with a Planned Unit Development (PD14-0001) at 1210 California Circle, Assessor's Parcel Number 022-37-017."

(3) Motion: to waive the first reading of Ordinance No. 38.818 beyond the title

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

(4) Motion: to introduce Ordinance No. 38.818

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

## NEW BUSINESS

### 3. Report on MCTV

Information Services Director Mike Luu gave an overview and update of Channel 26 PEG channel and the MCTV television studio. He reviewed design, purpose and use of government television Channel 15 for the City and Channel 26 for free, non-commercial community use (by a non-profit) run by non-profit MCTV.

Mayor Esteves asked about the conditions of a Request For Proposal (RFP) and what would attract bidders. He wanted to know cost assumptions and Mr. Luu explained how other cities in the area handle the local public television stations, such as Mountain View.

Vice Mayor Polanski noted that funding stopped from Comcast, and the City provided some volunteer services. \$15,000 for one year was provided in the last City budget. The Vice Mayor noted a letter from MCTV Board member Kurt Bohan.

Councilmember Montano agreed going out for an RFP would be good for the community. The goals of MCTV have not been fulfilled to capacity, mostly due to not having funding that was needed as a non-profit organization. MCTV needed resources to operate.

Next, the Mayor invited speakers.

Dinesh Gupta, Chair of the MCTV Board and member of Telecomm Commission, reported that MCTV Board members were Commissioners, and Board included the City's Information Services Director. He felt most residents know about the channel already, except dish-tv customers or those without Comcast or AT&T.

William Lam, on MCTV Board and a Commissioner, was surprised as he learned more about the operation of the station. Many people did take advantage of the free broadcast opportunity, since many were submitting items by DVD, etc. MCTV planned to do some fundraising to continue its operations.

Robert Marini, resident, said MCTV was a real asset for the community. He had not heard of the channel until a few weeks ago, so it was a surprise to him. Fundraising was needed.

Voltaire Montemayor, resident, said MCTV needed support by Milpitas residents.

Motion: to direct staff to go out for bids bid to obtain an operator for Channel 26 and its television studio

Mayor Esteves clarified that the staff would bring the RFP back to City Council.

At this point, Councilmember Gomez had disconnected from the telephone line and did not participate in the meeting further.

Motion/Second: Councilmember Giordano/Councilmember Montano

Motion carried by a vote of: AYES: 4  
NOES: 0  
ABSENT: 1 (Gomez)

#### 4. CAFR – audit report FY 14

The FY 2013-14 Audit Report was presented by Maze & Associates auditor Amy Meier for the end of the last fiscal year, including the Comprehensive Annual Financial Report (CAFR) and two compliance audits. No material weaknesses were reported, with one deficiency related to developer fees that was noted with recommendation. All required communications were reported.

Vice Mayor Polanski thanked the auditor and the city staff for excellent documents including the CAFR. Performance was noted on fast response time for public safety and other strengths of the City government. All of the report information highlighted how well staff did for the residents.

Mayor Esteves provided his suggestion that maybe next time it would be helpful to have some visual presentation overhead, showing highlights to see what was discussed in the auditor's presentation.

Motion: to accept the City's Comprehensive Annual Financial Report and other related Annual Audited Reports for the fiscal year ended June 30, 2014.

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 4  
NOES: 0  
ABSENT: 1 (Gomez)

**RESOLUTIONS**

Three resolutions were adopted on the consent calendar.

**AGREEMENTS**

Eight items were approved on the consent calendar.

**SUCCESSOR AGENCY**

Call to order

Mayor/Chair Esteves called the Successor Agency meeting to order at 10:44. Four members were present, with Councilmember Gomez absent.

Approve Agenda

Motion: to approve the agenda and one item on consent calendar

Motion/Second: Vice Mayor Polanski/ Councilmember Montano

Motion carried by a vote of: AYES: 4  
NOES: 0  
ABSENT: 1 (Gomez)

\*SA3. Agreements re: Tax Allocation Bonds

Approved three consultant agreement related to issuance of the 2015 Tax Allocation Refunding Bonds:  
(1) Agreement with Jones Hall for legal services  
(2) Agreement with Fieldman, Rolapp & Associates for financial advisory services  
(3) Agreement with Fraser & Associates Inc. for independent fiscal consultant services

**ADJOURNMENT**

Mayor Esteves adjourned the City Council and the Successor Agency meeting at 10:45 PM.

**The foregoing minutes were approved by the Milpitas City Council on December 2, 2014.**

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**Mary Lavelle  
Milpitas City Clerk**