

MEETING MINUTES CITY OF MILPITAS

Minutes of: Joint Meeting of Milpitas City Council, Successor Agency and the Public Financing Authority
Date: Tuesday, February 3, 2015
Time: 7:00 PM
Location: Council Chambers, Milpitas City Hall, 455 East Calaveras Blvd., Milpitas

CALL TO ORDER

Mayor Esteves called the meeting to order at 6:31 PM. The City Clerk noted the roll.

PRESENT: Mayor Esteves, Vice Mayor Montano, Councilmembers Barbadillo and Grilli

ABSENT: Councilmember Giordano was absent at roll call, and arrived a few minutes later for Closed Session.

CLOSED SESSION

City Council convened in Closed Session to discuss litigation matters.

City Council then convened in Open Session at 7:11 PM.

ANNOUNCEMENT

None out of Closed Session.

PLEDGE

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

INVOCATION

Vice Mayor Montano offered a prayer to start the meeting.

MEETING MINUTES

Motion: to approve the minutes of the January 20, 2015 City Council meeting

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

SCHEDULE OF MEETINGS

Motion: to approve Council Calendar/Schedule of Meetings for February 2015

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

PRESENTATION

Mayor Esteves presented certificates to:

1) Performers from the City's December 1, 2014 Tree Lighting Ceremony

2) Health for Humanity Yogathon sponsored by the Hindu Swayamsevak Sangh group. Four men from the group accepted the certificate and showed a video to promote "Sun Salutations" in yoga exercise. They also gave a physical demonstration of the exercises.

PUBLIC FORUM

Tom Valore, Milpitas resident, spoke out against resident Rajeev Madnawat, whose behavior he found reprehensible during the past election season, particularly on the internet. Mr. Valore commented on the Mayor's new campaign finance reform committee, and that he applied but never heard from the Mayor. He felt the Council could not get an objective result from the committee, as it was biased from the start so he objected to the whole purpose of the committee.

Robert Marini, Milpitas resident, referred to a letter from Sunnyhills Neighborhood Association about requesting that all future utility rate increases provide specific information. The city was in violation of a section of the state constitution, related to fees charged for utility rates.

Councilmember Giordano handed a packet of information from the state Fair Political Practices Commission to Mr. Marini, which she explained included several letters ruling that she did not have any conflict of interest in voting on matters related to real estate.

Rob Means, 1421 Yellowstone resident, commented on the overall human family. He talked about climate change, fossil fuels, temperatures and other related topics.

Robert, a Milpitas resident, said every year was a dumber idea than last year. Get rid of the landfill, he urged. He made comments about the land for the current landfill and sewage treatment plant he believed was just given to the City of San Jose by Milpitas.

City Manager Tom Williams responded to the last speaker that the land was in the City of San Jose, as it always had been, not Milpitas. Mayor Esteves disagreed with the last speaker.

Voltaire Montemayor, Milpitas resident, suggested exercise could be applied city-wide on specific days. Water conservation should be observed, he said.

ANNOUNCEMENTS

City Manager Tom Williams announced that on Saturday, February 14 and Sunday, February 15, Dixon Landing Road would be closed (at railroad) for a short period for the BART building project. Also, he announced two City holidays this month on February 12 and February 16.

Mayor Esteves noted the 50th anniversary of the Civil Rights March and legislation, upon the occasion of Black History Month observed during the month of February. Resident Demetress Morris accepted a plaque from the Mayor and invited all to Sunnyhills Church on Saturday, February 7 at 9:00 AM at the Methodist Church.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Ogaz asked the Mayor and Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. No conflicts or contributions were reported.

APPROVAL OF AGENDA

Motion: to approve the agenda, as submitted

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

CONSENT CALENDAR

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

Mayor Esteves requested to remove agenda item no. 9 (approve mid-year budget) from consent.

Councilmember Giordano asked to place item no. 10 (receive Financial Status report) onto consent. Vice Mayor Montano asked for a graph or pie chart or bar graph for the next time the financial report was provided by staff.

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

*** 5. Appointments**

Upon Mayor Esteves' recommendation:

1) City Engineer Steven Machida, staff alternate to Councilmember Barbadillo on the Santa Clara Valley Water District Water Commission, had a term expired in December 2014 so Council re-appointed Mr. Machida in the same capacity.

- 2) Appointed Councilmember Marsha Grilli as the Milpitas representative and Councilmember Giordano as Alternate to the Santa Clara County's Expressway Plan Policy Advisory Board.
- 3) Appointed Councilmember Garry Barbadillo as the Alternate to Vice Mayor Montano on the Santa Clara Valley Transportation Authority's Policy Advisory Committee.

- * 6. Commission appointments
 - Economic Development Commission: newly appointed Milpitas Unified School Board member Bob Nunez as school board member on the Economic Development Commission to a term that will expire in April of 2016.
 - Parks, Recreation and Cultural Resources Commission: newly appointed Samu Tiumalu to serve as Alternate No. 2 on the PRCRC to a term that will expire in June of 2015.
- * 7 Youth Advisory Work Plan Approved the Youth Advisory Commission Work Plan for 2015.
- * 8 Investments status Received the investment report for the quarter ended December 31, 2014.
- *10. Financial Status Report Received the financial status report for the six months recently ended on December 31, 2014.
- *11. Resolution – By-Laws Adopted Resolution No. 8442 approving revisions to the Senior Advisory Commission Bylaws.
- *12. Resolution approve MOU Adopted Resolution No. 8443 approving the Memorandum of Understanding with the Mid-Management and Confidential Unit covering the period of February 4, 2015 through June 30, 2016.
- *13. Resolution approve MOU Adopted Resolution No. 8444 approving the Memorandum of Understanding with the Milpitas Professional and Technical Group covering the period of February 4, 2015 through June 30, 2016.
- *14. Resolution approve MOU Adopted Resolution No. 8445 approving the Memorandum of Understanding with the Milpitas Association (MEA) covering the period of February 4, 2015 through June 30, 2016 unless extended, upon condition that MEA dismiss the Public Employees Relations Board (PERB) charge.
- *15. Community Center Audio Visual upgrade Approved plans and specifications for Project No. 3406, and authorized advertisement for Bid Proposals for Community Center Auditorium Audio Visual Systems upgrade.
- *16. Legal Services from Burke, Williams & Sorensen Approved the First Phase Agreement with the law firm of Burke Williams & Sorensen, LLP for legal services regarding the elimination of odors in the City of Milpitas.

PUBLIC HEARINGS

- 1. Resolution related to Land Use Conversions
 - Senior Planner Adam Petersen provided background on why the City Council was requested to repeal a section of a previously adopted resolution resulting in a policy regarding exemption to industrial land conversions to residential land at California Circle, and also specified for a part of the McCarthy Ranch area. He displayed drawings of two approved projects for residential projects along California Circle in an otherwise industrial area that were approved based on the existing exemption.
 - No comments were received about this proposed change, despite extra outreach efforts including to property owners. On January 14, the Milpitas Planning Commission recommended that City Council adopt the resolution.
 - Councilmember Grilli asked questions about the Waterstone residential project. It was not high density, staff explained. Now, a more consistent neighborhood was sought for California Circle ultimately.

Mayor Esteves expressed his intent for this change. He wanted the land in the middle never to change to residential use at California Circle.

Councilmember Barbadillo asked about progress in the Transit Area and the MidTown areas, and questioned the motivation for this exemption in the resolution.

Vice Mayor Montano asked for further details on the map and why the McCarthy Blvd. area was on it and recommended for exemption. Staff responded that this segment was to remain as zoned, if the resolution was adopted.

Mayor Esteves asked staff to explain “compatibility” as mentioned in the explanation for this change.

Next, Mayor Esteves opened the public hearing for comments

Robert Marini, Milpitas resident, commented on exemptions from the rules and lack of consistency. He talked about Councilmembers satisfying developers.

Rob Means, Milpitas resident, said it sounded like the City was making it easier to convert this property from industrial to residential. He did not understand that when trying to build out the TASP area. People would still be driving their vehicles in that area.

Bob Nunez, California Villas resident, saw this as a change that would be helpful. He understood a desire for some conformity in his neighborhood with the new developments coming in. He supported the staff recommended change in the resolution.

Voltaire Montemayor, Milpitas resident, agreed on it and urged a decision.

(1) Motion: to close the public hearing

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

Mayor Esteves said he was serious about drastic changes to job sites, commercial land, being changed to residential land. There was no problem of compatibility, as he did not see that with the two approved California Circle developments. He did not view California Circle as a good site for residential development.

Councilmember Grilli understood the staff recommendation but did not support it. She did not want further conversion and cared about the impact to schools.

Councilmember Barbadillo agreed with consistency. All needed to assess what was going on currently: the resolution exempted the two areas from conversions. He supported the removal of the exemption. It would thus encourage development of the two specific plan areas that were underway.

Vice Mayor Montano felt the BAPS land near California Circle should be exempted. She had a split idea, not to exempt for McCarthy Ranch while leaving in an exemption for California Circle.

Councilmember Giordano supported staff and Planning Commission recommendations, since it made sense to her and was good planning.

Vice Mayor Montano moved to adopt a resolution allowing for an exemption for the BAPS land near California Circle and to remove it for the McCarthy Ranch land. There was no second to her motion.

Councilmember Barbadillo made a motion to adopt the resolution as staff recommended.

(2) Motion: to adopt Resolution No. 8441 repealing Paragraph 7 in the previously adopted Resolution No. 8220

Motion/Second: Councilmember Barbadillo/Councilmember Grilli

City Attorney Ogaz commented further that the City Council could delete the final sentence in the last paragraph in the Resolution if the goal was to not allow any exemption for California Circle. Councilmembers agreed.

Mayor Esteves clarified that no other lots would be exempted if adopted in this manner, and he accepted this change, as did motion maker Councilmember Barbadillo.

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

2. Zoning Amendment Prohibiting Ground Floor residential in Town Center

Senior Planner Adam Petersen reviewed the city-initiated zoning change text amendment written primarily to prohibit ground floor residential use in the Town Center zone, and to limit live/work units to 10% of a mixed use project, along with other changes. He explained the outreach conducted including a notice mailed to 850 property owners and residents. The Milpitas Planning Commission recommended that the Council approve this Town Center zone text amendment.

Councilmember Giordano stated her view that this was an excellent proposal. It would keep the initial intent of the Town Center so she was glad.

Vice Mayor Montano did not like mixed-use in this development, and the City should keep it for business uses primarily. She remarked on high volume of traffic on Calaveras Blvd.

Mayor Esteves explained the reason this proposed change came forward, to allow limited residential where ground floor commercial required. No 100% residential was allowed.

Councilmember Barbadillo opposed any residential development at all in Town Center, and he was not okay with the idea of mixed use.

Councilmember Giordano proved some history about this site and the overlay district at Town Center.

Vice Mayor Montano agreed with Councilmember Barbadillo. Housing was not part of the equation when Town Center was first built so she urged to change it back to the original conception with no residential there at all, with only commercial uses. Heavy traffic was an issue.

Mayor Esteves asked how staff assessed the economic impact to development that would be only commercial. He felt a need to support economic trends.

Councilmember Barbadillo asked how large in size was the entire Town Center area? Staff did not know by square feet but it was roughly two miles square.

Mayor Esteves opened the public hearing for comments.

Steve Sidell, resident, had lived in this area of Town Center on Sinclair and hoped new residents would be respected when moving into the Town Center area. He felt the recommendation was well thought out by Planning staff and the Planning Commission. He agreed walking across E. Calaveras Blvd was dangerous out there. He supported the recommendation and enjoyed living in this city.

Heidi Wolf-Reed, resident, said that if you want vibrant commercial you need residents to support that. Around the bay, people could see dead downtowns where residences were denied. There was a need for good mixed-use buildings to save from blight.

Robert Marini, resident, felt the city was overcrowded now, so just keep Town Center with no residential built there. He also suggested building a hotel at the former Mervyn's store site.

Voltaire Montemayor, resident, said the Council could consider no more residential at all in Town Center, and it could keep mixed use.

(1) Motion: to close the public hearing

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

Mayor Esteves stated he possibly wanted to change his mind, after asking many questions about where residential or commercial development was currently located. He wanted to save job sites and tax-generating sites. The focus on housing in Milpitas was in the Transit Area now.

(2) Motion: to waive the first reading beyond the title of Ordinance No. 38.820

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

(3) Motion: to introduce Ordinance No. 38.820 (to disallow any ground-floor residential development in the mixed-use Town Center Zoning area)

Motion/Second: Councilmember Giordano/Councilmember Grilli

Councilmember Grilli was happy with this change and would like to see limiting purely residential while mixed use was a good concept. The City should encourage a vibrant community there.

Councilmember Barbadillo commented on live/work units, with only two approved and not yet built; this concept was not yet tested. The same thing was true about mixed use, with no solid example of how this worked in Milpitas.

Mayor Esteves asked about the height limit of buildings in Town Center. Staff responded that the City Council could limit height of a specific proposed building.

Vice Mayor Montano agreed with Councilmember Barbadillo that it was a good idea to keep the Town Center area all commercial, with no residential development at all.

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

Councilmember Barbadillo then made a new motion to direct staff to come back with a proposed ordinance eliminating all residential development in the Town Center zone, and be presented at next Council meeting. Vice Mayor Montano seconded.

City staff noted the need to re-notice this action, so staff could bring it back on March 3.

Councilmember Giordano responded that she would vote no on the motion, as she thought what was on agenda tonight was good planning.

(4) Motion: to direct staff to return to City Council on March 3 with a new ordinance and necessary actions to eliminate all residential development in the Town Center zone

Motion/Second: Councilmember Barbadillo/Vice Mayor Montano

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

City Council then took a break at 9:50 PM and then reconvened at 10:02 PM.

3. Development Agreement with SCS/Citation, et al.

Planning Director Steve McHarris presented the development agreement proposed for the Citation projects in the Transit Area Specific Plan: Amalfi I & II, The Edge. Fees were requested to be deferred for impact fees. Staff provided history on fees in the TASP. Three projects by Citation would be affected in the development agreement for newly constructed apartments in the Transit Area with commercial uses mixed in.

Mayor Esteves asked questions about the value City would receive from constructing the units up front. He questioned the need for the fee reduction.

Vice Mayor Montano asked if the developer would pay the TASP impact fees and Mr. McHarris replied yes.

Councilmember Grilli asked about the performance schedule, as mentioned by staff.

Vice Mayor Montano felt no one would live in those units if the park did not get built. A community benefit included the new park getting built by the developer (as opposed to solely paying park-in-lieu fees).

Mr. McHarris identified benefits and findings for the ordinance recommending adoption of the Development Agreement with Citation.

Councilmember Barbadillo tried to summarize the issue at hand, which was a special exemption for one developer. He objected to changing facts when the fees had been determined by a nexus study, successfully.

City Manager Williams responded about the density of development in the Transit Area, the adopted fee, and that maybe it would be adjusted again, due to the dynamics of the fluid market.

Mark Tiernan, representing the developer, was at the podium for developer suggesting it would be acceptable to continue or delay the hearing.

Mayor Esteves then asked to continue this matter to the next meeting.

First, Mayor Esteves opened the public hearing for comments. It was pointed out that those who spoke at this public hearing on this date would not be permitted to speak again at the next public hearing date.

Rob Means, 1421 Yellowstone resident, spoke about the \$3.8 million the City seemed willing to allow the developer, and he asked, in exchange for what? Did the citizens get fair value for that dollar figure? The developer was going well beyond what other developers in the city had done, with other benefits identified.

Tom Valore, Cardiff Place resident, agreed with what Mr. Means expressed. He asked the Council how it would expect anyone to play a game with floating or changing fees. A developer needed to know what the fees were once established.

Motion: to continue the public hearing on the Development Agreement to the next City Council meeting date of February 17, 2015

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

UNFINISHED BUSINESS

4. Odor Report This item was not heard.

NEW BUSINESS

9. Mid-Year budget adjustment Motion: to approve the identified five Fiscal Year 2014-15 mid-year budget appropriations as itemized:

- 1) Increase the budget appropriation to the General Fund and Transit Area Impact Fee Fund by \$6 million to pay for the final installment payments to Mission West Properties related to the purchase of the McCandless property.
- 2) Increase the budget appropriation for various Transit Area infrastructure projects by \$7,838,901.
- 3) Increase the budget appropriation for the 2014 Road Rehabilitation Project (CIP 4270) by \$115,920 to include the rehabilitation work needed at Aspen Village on Main St. Transfer \$23,100 from Gas Tax Fund to fund the 2015 Street Resurfacing Project (CIP 4275).
- 4) Increase the budget appropriation for the Engineering Department by \$13,750 to cover expenses associated with the contract with NBS Government Finance Group for the required annual administration of the City's Lighting Landscape Maintenance Districts.
- 5) Increase the budget appropriation for the Fire Department by \$1,500 for food purchased for residents sheltered at the Sport Center during the December 11, 2014 storm.

Motion/Second: Mayor Esteves/Vice Mayor Montano

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

The City Council portion of the joint meeting was then adjourned at 11:22 PM.

JOINT MEETING

CITY COUNCIL, SUCCESSOR AGENCY & PUBLIC FINANCE AUTHORITY

SA1 Call to Order The Joint Meeting was called to order at 11:22 PM with all members present.

SA2 Approve Agenda Motion: to approve the agenda of the joint meeting

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

SA3. Joint Resolution Adopting Policies and Procedures

Finance Director Emma Karlen explained the need for policy and procedures to be approved.

Jones Hall legal counsel Chris Lynch presented information to the City Council and explained why the training this evening was needed per federal securities law. He gave background on regulations and provided training to the Council, designed primarily to prohibit fraud by public agencies including municipalities. There were many SEC rules to follow, including the adoption of written policies and procedures. Important material facts

about the city must be included in bond disclosure documents - for example, if a large employer leaving the city was known or if pension fund obligations were larger than described.

Mayor Esteves requested a copy of the powerpoint presentation given by Mr. Lynch.

Vice Mayor Montano asked whether the city was audited. Mr. Lynch agreed the City had an annual audit, however the policies and procedures approved at this meeting were specific to bond issuance regulations.

Motion: to adopt a joint resolution No. 8446 / SA 7 / PFA 16 of the City Council of the City of Milpitas, the Board of the Successor Agency to the former Milpitas Redevelopment Agency and the Board of the Milpitas Public Financing Authority approving the adoption of Disclosure Policies and Procedures

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

SA4. Resolution of Successor Agency

Finance Director Emma Karlen reviewed the explanation for action by the Agency board to permit the refunding bonds to be issued along with the required Preliminary Official Statement. She reviewed the terms of bonds, and other details considered for investment purposes. These were rated AA- which was fairly high for the city, following dissolution of the Redevelopment Agency.

Motion: to adopt Resolution No. SA 8 of the Board of the Successor Agency confirming the issuance of tax allocation refunding bonds pursuant to an indenture of trust, approving preliminary and final official statements and providing other matters relating thereof, including approving a depository agreement.

Motion/Second: Agency Vice Chair Montano/Board member Grilli

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

ADJOURNMENT

Mayor Esteves adjourned the joint meeting at 11:37 PM.

The foregoing minutes were approved by the Milpitas City Council on February 17, 2015.

**Mary Lavelle
Milpitas City Clerk**