

# Meeting Minutes of the Special Meeting of the Milpitas City Council

**SATURDAY, FEBRUARY 7, 2015**

11:00 AM

Milpitas City Hall – Council Chambers  
455 E. Calaveras Boulevard, Milpitas, CA

**CALL TO ORDER - 11:15 AM.** Due to a large number of visitors in the audience, the Mayor moved the location of the meeting from the scheduled Committee Room on the first floor to the Council Chambers on the second floor of Milpitas City Hall.

**ROLL CALL:** Mayor Esteves, Vice Mayor Montano, Councilmembers Barbadillo and Grilli. Assemblymember Kansen Chu was present along with City officials City Manager Tom Williams, City Attorney Mike Ogaz and City Clerk Mary Lavelle.

**APPROVAL OF AGENDA** – approved by unanimous vote.

## **PUBLIC FORUM**

Mayor Esteves limited public comment to two minutes for each speaker and the City Council agreed. He then welcomed the many residents in attendance.

Assemblymember Kansen Chu thanked the City of Milpitas for having him on this date. He was interested in learning legislative priorities for all cities in his Assembly District. Mr. Chu planned to move his district office from Fremont to Milpitas in 2015 and introduced two of his staff.

Over the next one and one half hour's time, 40 speakers of all ages, nearly all residents of Milpitas with a few from Fremont and San Jose, addressed the Mayor, Council and Assemblyman with comments and complaints about odor in Milpitas. Most expressed opposition to the proposed expansion of the Newby Island Landfill in San Jose.

## **DISCUSSION**

Following these comments by the public, Mayor Esteves noted that City staff had attended some meetings of the local citizens' group formed against the continuing bad odor in the city. The Mayor wanted to update the group on city actions on the odor issue to date, and expressed that the City Council was in the same boat, saying that city government and residents were in the same "battalion" to work together to combat odor.

Mayor Esteves asked City Attorney Mike Ogaz to update the audience members. The solid waste permit was at issue at a meeting at the Embassy Suites Hotel held in November, two meetings in Sacramento at the CalRecycle offices. The City vigorously opposed the permit to increase the landfill by 95 feet. The City heard the previous Thursday that the state agency would in fact issue the permit. Another permit was before the City of San Jose, with an upcoming meeting in the nearby city on February 11 where City of Milpitas representatives would be present. Then further action in the courts was possible. A CEQA lawsuit was ongoing which occurred after the City of San Jose approved an Environmental Impact Report, as certified in the past. That matter was on appeal in the courts.

The City Attorney continued, explaining that the City of Milpitas recently started a process calling for Requests For Qualifications (RFQs) to seek a law firm with experience in environmental issues. A committee then selected Burke, Williams & Sorenson to represent the City on these issues and to come up with possible options for action by the City Council. A companion class action lawsuit was underway with some effort collaborating on that one also.

Finally, the City was willing to participate in a regional odor study, although Newby Island/Republic representatives had said that odor came from any other source but their facility. A study could then

conclude where the odor really was generated. The City would like to talk to Assemblymember Chu about legislative options. The permitting process did not allow for consideration of odor as an item to make decisions on landfill permits. Further talks with the Bay Area Air Quality Management District were necessary, along with possible legislative solutions.

Mr. Ogaz stated that resident participation was so important, he emphasized, by raising dialogue. Public Records Act requests could be made to those other agencies for the information people sought. This would be more than requests by the City to other government agencies.

Mayor Esteves emphasized that the Council was staking taxpayers' money on these legal and other efforts to combat the odor and health issues, in addition to related economic development. He urged residents not to give up and was proud that the citizens remained active.

Vice Mayor Montano knew that odor was a regional issue, with the odor getting worse since she had lived here from the 1960s. Everyone should ask where the data was, and send it to the agencies. She recommended that there needed to be better communication between agencies, since each had its own agenda. Collaboration was necessary. Better monitoring of CalRecycle and BAAQMD was needed.

Councilmember Barbadillo shared the experience that folks spoke about. There were many issues surrounding the odors and all created leverage to create pressure. Regarding the BAAQMD, it was necessary to give more resources to that agency, to allow more enforcement of odor problems. Regarding CalRecycle, considering a public nuisance was one item for permit issuance, to re-define that possibly to strongly include any odor. State legislation that focused on landfills and composting may be needed. Ensuring these regulatory agencies had necessary funds for enforcement was also needed.

Vice Mayor Montano addressed re-zoning, and was uncertain what the City Council had authority to do since the landfill was in San Jose.

Councilmember Grilli commended the Mayor, Council, and staff on steps taken trying to do something on odor issues. Legislative options were slow though while she fully supported a regional odor study. Try to stop or slow the permit process, she urged, with the need to mitigate odors being suffered and dealt with it now.

Besides odor, Mayor Esteves wanted Mr. Chu to pay attention to the soundwall issue along the I-680 freeway where only one side had a soundwall. Of course, the matter of traffic which was a regional issue was another focus. He asked for attention to Highway 237 carpool lane with no entry yet in Milpitas.

Assembly man Chu thanked the residents and City Council for all the great input. He referred to his past work on San Jose City Council dealing with issues at the Water Pollution Control Plant, and the drying beds getting covered to reduce odor versus open air drying beds. There were multiple sources of the odors, so he liked the idea of a regional study and then to deal with the sources. Also the Zanker Landfill was not far away. He would like to see neighboring cities to all affect the permitting of facilities that have impact on residents regionally. He planned to talk to operators of both Newby Island and Zanker landfills to seek mitigation of the odors. Even if a permit was not issued to expand, both would still continue to operate for next 30 years, and odors could continue.

Lastly, Vice Mayor Montano asked the Assemblyman about Interstate 880's exit at Great Mall parkway, which was a dangerous exit with the need for new improved signs.

Mayor Esteves called for the conclusion of the meeting, in order to respect Mr. Chu's time whose next function would be held at Milpitas Library immediately following. The special meeting was adjourned at 1:15 PM.

*Meeting minutes drafted and submitted  
by Mary Lavelle, City Clerk*



Thelma Batila, Milpitas resident, sought support for the “Kids and Adults Day” event planned this year in Milpitas for challenged children, which was not a fundraising event. It was scheduled on Saturday, April 25, 2015 at the Milpitas Sports Center, from 2 – 5 pm. She asked the City Council to provide city support and put her request on the next agenda March 3.

In response, Mayor Esteves asked for Council consideration on the next agenda.

Rob Means, 1421 Yellowstone resident, talked about a People’s Climate March held in New York City in September last fall regarding climate change, and changes necessary in our world.

Voltaire Montemayor, Milpitas resident, supported artists and sports. He remarked on those who received the presentations earlier.

**ANNOUNCEMENTS**

Mayor Esteves noted Asian New Year being celebrated this week and this month, and he offered greetings to the Asian community of Milpitas.

**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 amended

City Manager Tom Williams asked to continue the report on crime data (Item No. 6) to the next meeting agenda on March 3.

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

Vice Mayor Montano requested to remove items no. 7 (Street Resurfacing), no. 12 (HT Harvey & Assoc. agreement) and no. 13 (agreement with NBS) from the consent calendar.

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

\* 3. Commission  
Appointments

Approved the following recommendations from the Mayor:

Arts Commission: Re-appointed three Commissioners Larry Voellger, Cyd Mathias, and Bob Gill as regular members to terms that expire in October of 2017.

Bicycle Pedestrian Advisory Commission: Appointed Vice Mayor Montano to serve as the Council liaison to this Commission.

Community Advisory Commission: Re-appointed Jose Rosario as a regular member to a term that will expire in January 2019.

Recycling and Source Reduction Advisory Commission: Appointed school district staff Brian Shreve as the MUSD school representative on the RSRAC to a seat (currently vacant) with a term that will expire in October 2015.

Senior Advisory Commission: Re-appointed Jae Kuk Wi as a regular member to a term that will expire in December 2016.

Telecommunications Commission: Re-appointed Kurt Bohan as a regular member to a term that will expire in January 2017.

- \* 4. Arts and Culture In-Kind Grant FY 2014-15      Approved the Milpitas Arts and Culture Grant awarded to the Fil-Am for in-kind performance space and City staff support.
- \* 8. Resolution      Adopted Resolution No. 8448 amending the Classification Plan to eliminate two Assistant Civil Engineer positions and to add one Associate Civil Engineer and One Engineering Permit Technician position within the Land Development - Engineering Department.
- \* 9. Resolution      Adopted Resolution No. 8449 amending the Classification Plan to establish a new classification of a Building Inspection Manager in the Building & Safety Department with an annual salary range of \$109,034 - \$132,533. Authorized funding a vacant Building Inspector position with an annual salary range of \$84,396 - \$102,583.
- \*10. Resolution      Adopted Resolution No. 8450 amending the Classification Plan to establish a new classification of a Marketing Assistant in the Recreation Services Department for an annual salary range of \$57,495 - \$69,886.
- \*11. Main Street Pavement      Approved plans and specifications for Main Street Pavement Reconstruction Project No. 4277 and authorize advertisement for bid proposals.
- \*14. Amendment to Agreement with Norma Nelson      Approved Amendment No. 2 to the agreement with Norma Nelson for services as a Buyer for the City in the not-to-exceed amount of \$19,800 00 for the period from February 27, 2015 to June 30, 2015.

## **PUBLIC HEARING**

- 1. Development Agreement with SCS/Citation, et al.      Planning Director Steve McHarris presented a recap from the City Council meeting of February 3 on the development agreement proposed for the Citation projects in the Transit Area Specific Plan (TASP) area: Amalfi I, Amalfi II, and The Edge. Fees were requested to be deferred for the development impact fees. Three projects by Citation would be affected in the development agreement for newly constructed apartments in the Transit Area with commercial uses as part of the projects.

Mayor Esteves asked staff to explain benefits of the agreement to the community and to the developer. Staff listed six fiscal benefits and four community benefits.

Councilmember Barbadillo asked if the impact fees were the main issue. He identified \$32,781 as the required developer's fee per new residential unit, approved in March 2014 when the TASP fees were reviewed and changed. Mr. McHarris explained much TASP fee history. The City Attorney responded on terms including the five year length of the proposed development agreement and for established fees for the Citation projects.

Councilmember Giordano remarked that this was not precedent setting, which staff confirmed. The City had executed several development agreements over the years. It was more cost effective to the city and its residents, which she viewed as a "win-win." She mentioned the development of Parktown where she lived. She favored the proposed agreement for Citation.

Councilmember Grilli stated that fees were increased last year due to anticipated lower density while this project would bring much higher density to the TASP area, which staff confirmed. She asked about the pedestrian overcrossing, which would cross from the new development over Montague Expressway – if grant funds were awarded – to allow those residents to easily access the new BART station.

Vice Mayor Montano commented on the total reduced fees the city would receive. She asked when the BART would be ready to open and staff replied that Santa Clara Valley Transportation Agency said in 2017. The City Manager responded further on the status of

the anticipated pedestrian bridge, and the funds sought to get it built. Ms. Montano questioned whether the bridge would be built ultimately.

Councilmember Barbadillo read aloud from the Planning Commission report in January. The City Attorney responded by describing the terms written in the proposed development agreement (not contemplating any reimbursement steps).

Councilmember Grilli remarked that another developer could propose a lower density project than this one yielding even fewer total TASP fees.

Vice Mayor Montano asked whether the City had given other developers such a reduction in fees. In the TASP, staff replied this was the first developer agreement, while there had been such agreements for development in the MidTown and other areas.

Mayor Esteves asked when fees would be collected, at the time of the Certificate of Occupancy or at the date of building permit issuance. He expressed concerns about timing, amount collected, treatment of all building applicants, and this project.

Next, the Mayor invited the project applicant to address the City Council. Mr. Mark Tiernan, representing developer SCS/Citation, gave reasons to support the three projects, which take a lot of capital. He discussed cost for each of the three Citation projects, totaling over \$270 million to build. The developer very much wanted to build in the TASP area at the higher densities, as identified in the plan.

Councilmember Barbadillo referred to the vesting tentative map for this project, and remarked on state and local government codes that affected the timing of the fees. He asked if they city received any objection from Citation on the fees. Mr. Ogaz said the city received a letter in the last few days, and probably by e-mail to staff in the past.

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

Robert Marini, resident, remarked on the non-benefits and disadvantages to this type of projects. He quoted amounts of water that would be needed for 1000 units built, causing cost increases for utilities even further and more traffic, not less.

Voltaire Montemayor, resident, said this was a great project, with benefits to the City. It would have a positive impact, near the new BART station.

Liz Ainsworth, Milpitas Chamber of Commerce President, referred to a written statement issued today by her organization in a letter to the City Council. The Chamber sought a good environment for people moving into Milpitas, including good commercial retail space at residential units next to the new BART station. She was positive about the proposed development.

Jim Sullivan, SCS real estate company, responded to several comments by Council member Barbadillo on the prior three-party cost sharing agreement on some very specific matters. He described the no cost-sharing of many improvements his company was building near this project site. He responded to the Mayor on a developer benefitting from the front end infrastructure building. He responded to the Vice Mayor that on the widening of Montague, he was working with the County on that step now. For The Edge project, he was asked to start this one quickly, when it was approved.

Steve Siddell, Milpitas resident, said that Milpitas needed to compete to attract residents and new development into the City. He urged Council to be careful about "one size fits all" approach to issues like this, and that the developer may go elsewhere when competing. He admired City staff for their hard work on this type of planning,

Tom Valore, Milpitas resident, saw the loss of \$3.8 million to the City which might lose a lot more if the developer was not willing to make an investment here if building only what

was economically feasible. He asked the decision makers to look at the total project, from the developer standpoint.

(1) Motion: to close the public hearing, after hearing six speakers

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

Councilmember Grilli wanted to hear from the City Manager on why a development agreement was good for the City. City Manager Tom Williams replied the City was getting infrastructure and improvements up front, so then the City did not need to do a Request for Proposals, collect fees, finance and build those. This was a good quality project and the agreement would help to facilitate it getting built, near the new BART station. The City risked tolerance with any decision and here there would be a lower risk to the City as a result, with the development agreement.

Vice Mayor Montano felt the one issue she had was inconsistency, and that the city should abide by its ordinance. She asked why she should make exceptions for one group and not another. The City should not give up \$3.8 million with this agreement and she believed the building of the bridge overcrossing was at risk.

Councilmember Giordano thanked here colleague for the question to the City Manager. The legal issue here was a fascinating topic. She asked if state law trumped municipal law, and then there would be an issue in court to be heard.

Councilmember Barbadillo commented on law and said this was all about good planning, following ordinances and resolutions, getting the TASP area built while trying to bend and carve exemptions. He sought integrity of rules and ordinances of the City.

Councilmember Grilli noted this was approved by the Planning Commission. Developer agreements had been approved by City Council before, so this request was not new. Ordinances and staff could be flexible and that was good for the community. The City needed a signature project at the BART entry so she supported this recommendation.

Mayor Esteves felt this project was getting credit to move ahead and he asked if other should get credit moving ahead quickly. Timing was part of any business plan while fees can and do go up. He commented on building permit timing and when fees applied. He did not think fees should be negotiated. There would be legal issues, while the City's ordinances were written to be defensible.

City Attorney Ogaz read aloud the title of Ordinance No. 38.819, "An Uncodified Ordinance of the City Council of the City of Milpitas approving a Development Agreement by and between the City of Milpitas and SCS Development Co., Amalfi Milpitas LLC and DPD Investments LLC, relating to the Citation I (Amalfi I and Amalfi II) and Citation II (The Edge) and Mixed-Use Development Projects."

(2) Motion: to waive the first reading beyond the title of Ordinance No. 38.819

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

(3) Motion: to introduce Ordinance No. 38.819 in order to approve a development agreement between City of Milpitas and SCS Development Co., Amalfi Milpitas, LLC, and DPD Investments, LLC

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

## UNFINISHED BUSINESS

### 2. Odor Report

City Engineer Steve Machida gave an oral report with handouts of his presentation. He described the number of complaints to both the City's hotline number and the Bay Area Air Quality Management District's odor hotline, with a noticeable spike recently in January. Mr. Machida detailed various meetings staff and the public had attended, many related to plan for expansion of the Newby Island landfill.

Mayor Esteves asked staff to provide additional information regarding the outcome of the City of San Jose Planning Commission where the expansion of the Newby Island Landfill was considered recently. Meeting minutes could provide the information he sought and staff agreed.

Mr. Machida described the protocol followed by BAAQMD when a complaint arrived from a resident. Vice Mayor Montano asked for detailed information on when the composting was scheduled at the landfill.

An Odor Mitigation process was proposed by Republic Services, and to form a South Bay Odor Coalition with stakeholders, to help determine odor sources in this area.

Councilmember Grilli asked if it would be to the advantage of the City to participate in funding a study on finding the source of odors. City Manager Williams explained that City of San Jose oversaw regulatory oversight of the landfill, and it may direct (or not) to condition Republic Services to do an odor study.

Councilmember Giordano noted there was lots of press about this subject lately. She asked the City Manager what message to provide to residents on this issue. Mr. Williams replied that to eliminate odor so that it did not impact residents was the objective.

Mayor Esteves encouraged residents to be engaged and to speak out on the expansion plan for the Newby Island landfill, which would have a long term impact.

Motion: to receive an oral update report on odor issues from the City Engineer

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

## REPORT OF COMMISSION

### 5. Arts Commission: Utility Box Painting

Recreation Services Director Renee Lorentzen reviewed the Arts Commission plan to implement a project to paint on the outsides of twelve electrical utility boxes throughout the City. She displayed a map of the locations with the sketch of the art planned to be painted on each particular box. Cost to the City included \$1000 for supplies and the remainder for an honorarium to each student painter and the teacher.

Councilmember Giordano felt this project represented the biggest bang for the buck, with Council only allocating money for the material (paint) as a big asset.

Councilmember Grilli asked about the timeframe for implementation of the painted boxes. Staff explained it would start in mid-March and planned completion at the end of April.

Vice Mayor Montano very much liked the display of Milpitas history throughout these sketches. She did not prefer the surreal art proposed for the box at Jacklin and Hillview and suggested instead a scene of union history or of the Alviso Adobe.

Mayor Esteves liked the art work to be shown around the city. He inquired if the artists' names would be displayed at the bottom, and staff said yes. Also, the city staff would be prepared to handle any graffiti that showed up on these boxes.

After discussion of the box painting project, both Mayor Esteves and Vice Mayor Montano stated that they both sought a City Council ordinance on a public art requirement for all future development projects. They requested staff to come back to City Council with that.

Motion: to approve the twelve Electrical Box Painting Art project designs at the dozen locations specified throughout the City of Milpitas for a total project budget of \$5,200

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

## NEW BUSINESS

6. Crime Report This item was removed from the agenda, to be heard at a future date.

## RESOLUTIONS

Three resolutions were adopted on the consent calendar.

7. Resolution Vice Mayor Montano inquired about terminology of the agenda item title. Staff clarified it was for "Cape Seal" and Slurry Seal" two processes done for street resurfacing work.

Motion: to adopt Resolution No. 8447 granting initial acceptance of the Street Resurfacing Project 2015 Street Cape and Slurry Seal, Projects No. 4275 and No. 3412, subject to a one-year warranty period, and reduction of the faithful performance bond to \$340,862; and grant authorization to the City Engineer to issue the notice of final acceptance after the one-year warranty period and to release and discharge the performance bond without further Council action

Motion/Second: Vice Mayor Montano/Councilmember Grilli

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

## AGREEMENTS

Two items were approved on the consent calendar.

12. Amendment to Agreement with H.T. Harvey & Associates Vice Mayor Montano asked about the Task No. 1 to be completed on this project and the jurisdiction of the identified creeks. Staff clarified those creeks were located within City boundaries, and not within the Santa Clara Valley Water District.

Motion: to approve Amendment No. 1 to the consultant agreement with Triple HS, Inc. doing business as H.T. Harvey and Associates for Project No. 3700 and increase the agreement amount by \$21,055

Motion/Second: Vice Mayor Montano/Councilmember Giordano

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

13. Agreement with NBS Vice Mayor Montano asked what this consulting group was contracted for. City Engineer Machida responded that the consultant would take a look at the annual Engineering

Reports that were required for the two Landscape Lighting and Maintenance Districts in the City (not related to the Community Advisory Commission trees project). These were prepared each year for review of the annual assessments adopted each year.

Motion: (1) to approve consultant agreement with NBS Government Finance Group in the not-to-exceed amount of \$29,900, and for a term from Feb 17, 2015 to Feb 18, 2016 for updates to the annual Lighting Landscape Maintenance Assessment District Engineer's Reports; and (2) to approve a budget appropriation in the amount of \$29,900 from the LLMD Funds 235 and 236 to the Engineering Budget

Motion/Second: Vice Mayor Montano/Councilmember Giordano

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

## **JOINT MEETING**

## **CITY COUNCIL and PUBLIC FINANCING AUTHORITY**

FA1 Call to Order

The Joint Meeting was called to order at 11:00 PM with all members present.

FA2 Approve Agenda

Motion: to approve the agenda of the joint meeting and consent calendar item

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

\* FA3. Resolution to Update Officers

Adopted City Council Resolution No. 8451 and Milpitas Public Financing Authority Resolution No. PFA 17 authorizing investment of monies in the Local Agency Investment Fund and updating officers' information.

## **ADJOURNMENT**

Mayor Esteves adjourned the joint meeting at 11:00 PM.

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