

**Draft MEETING MINUTES
CITY OF MILPITAS**

Minutes of: Regular Meeting of Milpitas City Council
Date: Tuesday, August 4, 2015
Time: 6:00 PM Closed Session / 7:00 PM Open
Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas

CALL TO ORDER

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

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

ABSENT: None

Councilmember Garry Barbadillo participated by telephone conference for the entire meeting from his remote location at the Radisson Hotel in Hartford, Connecticut.

Also in attendance at the dais was the City's new Interim City Attorney Gary Baum.

CLOSED SESSION

City Council convened in Closed Session to discuss litigation matters.

City Council then convened in Open Session at 7:00 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 Carmen Montano read from the bible to start the meeting.

MEETING MINUTES

Motion: to approve the minutes of June 19, July 1 and 3, 2015 City Council meeting, as submitted and amended for July 1

City Clerk Mary Lavelle noted edits to the July 1 draft meeting minutes: each vote would note that one member was absent (Garry Barbadillo), on page 1 at comments by Rob Means "in order to" would be corrected on the last sentence, and on page 3, the reference to "Pitchess" motion would be corrected in first paragraph.

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 August 2015

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

PUBLIC FORUM

Rob Means, Milpitas resident, spoke on the need to address climate change and displayed an online video segment featuring President Obama.

Robert Marini, Milpitas resident, referred to Roberts Rules of Order, how Council meetings were run, the late hour the meetings ran, and moving items around to get the citizens' business done.

A woman, Annalea, spoke about a health and wellness forum to be held at the Milpitas Library and the need to work together as a community.

Voltaire Montemayor, Milpitas resident, said we have one of the best cities in the world, in the USA, with one of the highest ratings, and lowest unemployment in the state.

ANNOUNCEMENTS

City Manager Williams invited Public Works Director Nina Hawk to the podium, who announced information about water conservation for the public that was to be available on a new website www.savewaterMilpitas.org.

Councilmember Giordano requested to adjourn the meeting in memory of Mr. Larry Voellger, a City of Milpitas Arts Commissioner, who had recently passed away. She complimented the City about recent results of a PERB charge that was dismissed and she thanked city staff.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Baum asked Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. None were reported.

APPROVAL OF AGENDA

Motion: to approve the agenda as submitted, with one change in the order of items

Councilmember Giordano requested to hear the Unfinished Business (items no. 6 and no. 7) from the last Council meeting to be heard first, before all other matters (prior to Public Hearings).

Motion/Second: Councilmember Giordano/Mayor Esteves

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

CONSENT CALENDAR

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

City Manager Williams requested to remove item no. 18 (Strategic Plan) from consent, for a presentation by staff and consultant.

Mayor Esteves had a recommendation for his appointment to the BAWSCA Board of Directors (item no. 10) while he was quite open to receiving other recommendations for that Board if another Councilmember was interested. No one responded and the matter remained on consent.

Vice Mayor Montano requested to remove items no. 12 (computers donation), no. 13 (Commission Bylaws) and no. 17 (investment report) from consent.

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

* 8. Odor Report

Received the update of the odor control report.

* 9. Commission appointments

Approved the following appointments recommended by the Mayor:

Community Advisory Commission:

Appointed Mike Bilbao as voting member to a term that will expire in January of 2016.

Appointed Michael Lee as Alternate No. 1 to a term that will expire January of 2017.

Newly appointed Evan Bell as Alternate No. 3 to term that will expire in January of 2016.

Parks, Recreation and Cultural Resources Commission:

Re-appointed Samu Tiimalu as Alternate No. 2 to a term that will expire in June of 2017.

Sister Cities Commission:

Re-appointed Nolan Chen to a term that will expire in September of 2017.

- *10. BAWSCA Appointment Moved to appoint Mayor Jose Esteves to serve as the Milpitas representative to the Board of Directors of both Bay Area Water Supply and Conservation Agency (BAWSCA) and its financing entity, the Regional Financing Authority (RFA), to a term that will expire in April of 2017.
- *14. Fee Waiver Approved the fee waiver requested by St. Elizabeth Catholic Church totaling \$1,430.77 related to the Parish Festival to be held at the church on Sunday, August 16, 2015.
- *15. Remove Commission member Removed Mark Wong as Alternate No. 2 on the Economic Development Commission, thus creating a new vacancy for a term that will expire in April 2016.
- *16. Re-open Two CIPs Approved re-opening Capital Improvement Program Project No. 5096 Pinewood Park Renovation and Project No. 7109 Water System Replacement.
- *19. Resolution – street closure Adopted Resolution No. 8494 supporting temporary partial street closure on Technology Drive, S. McCarthy Blvd, and Tasman Drive on Saturday, October 17, 2015 from 8:00 a.m. to 2:00 p.m. for the American Heart and Stroke Walk in Milpitas.
- *20. Resolution – asphalt purchase Adopted Resolution No. 8495 approving the sole source purchase of asphaltic material from Granite Construction Company and from Reed and Graham Inc. for a not to exceed combined annual amount of \$80,000, and authorized staff to execute the agreements.
- *21. Resolution – LN Curtis & sons Adopted Resolution No. 8496 approving the agreement with the Santa Clara Valley Transportation Authority for the funding of a sole source purchase of a specialized urban search and rescue trailer from L.N. Curtis & Sons for a total cost of \$165,359.81. Approved a budget appropriation of \$165,359.81 into the Fire Department budget.
- *22. Resolution – Soundwall Renovation project Adopt Resolution No. 8497 awarding a contract to George Bianchi Construction Inc. and authorize the City Manager to execute the contract for the 2014 Soundwall Renovation Project No. 4267 in the amount of \$406,299.50; and authorizing the City’s Director of Engineering to execute contract change orders for 2014 Soundwall Renovation Project No. 4267 in the cumulate amount not to exceed \$40,000.
- *23. Award Contract to JJR Construction Awarded the bid to J.J.R. Construction and authorized the City Manager to execute the contract for on-call sidewalk repair, curbs & gutters for annually not-to-exceed \$336,250. Authorized the Purchasing Agent to exercise up to four annual renewal options, subject to appropriation of funds and without further City Council approval.
- *24. Award Bid to Battalion One Fire Protection Awarded the bid to Battalion One Fire Protection for citywide fire extinguisher maintenance and repair service for the annual not-to-exceed amount \$23,008.00, and authorized the City Manager to execute the contract with Battalion One. Authorized the Purchasing Agent to exercise up to four annual renewal options, subject to appropriation of funds and without further City Council approval.
- *25. Award Bid to Simplex Grinnell Awarded the bid to Simplex Grinnell for citywide fire alarm and fire suppression system inspection, testing, maintenance and repair service for the annual not-to-exceed amount \$35,868.00, and authorize the City Manager to execute the contract. Authorized the Purchasing Agent to exercise up to four annual renewal options, subject to appropriation of funds and without further City Council approval.
- *26. Amendment No. 1 to Agreement with JP Graphics Approved Amendment No. 1 to the agreement with JP Graphics increasing the contract value for citywide printing services annually by \$65,000 for a total not-to-exceed \$135,000.

Authorized the Purchasing Agent to exercise up to four annual renewal options, subject to appropriation of funds and without further City Council approval.

*27. Emergency Medical Dispatch Services

Authorized the City Manager to renew the agreement between the County of Santa Clara and the City of Milpitas for Emergency Medical Dispatch services.

*28. Amendment with ACCO Engineered Services

Approved Amendment No. 6 to the agreement with ACCO Engineered Systems, Inc. for emergency repairs to the City Hall HVAC system for the not-to-exceed amount of \$113,768.01.

*29. Amendment to Harris & Associates Agreement

Approved and authorized the City Manager to execute Amendment No. 2 to the Agreement with Harris & Associates in the amount of \$92,000.

*30. Amendment to Burke, Williams Agreement

Approved Amendment No. 1 to the current agreement with the law firm of Burke, Williams & Sorensen for legal services regarding elimination of odors.

UNFINISHED BUSINESS

6. Economic Development Quarterly Report

Economic Development Manager Edesa Bitbadal provided the Council with an overview of many activities her office and the Economic Development Commission had been working on in 2015, emphasizing her close working relationship with Planning and Building staff. Her emphasis had been on outreach to local businesses, including business retention and attraction and a strong relationship with the local Chamber of Commerce. Ms. Bitbadal highlighted with video, Facebook posts and websites some of the newer companies doing business in the City. For example, staff highlighted recent billboard congratulations to incoming and outgoing CEOs of Cisco, a major employer in Milpitas.

Special projects included Green City efforts, Bike Share program for companies, and the Milpitas Super Communities Committee (re: 2016 Superbowl coming to Santa Clara).

Councilmember Giordano asked staff to provide the number of new jobs added to the City. Vice Mayor Montano urged staff to contact Milpitas Bicycle Pedestrian Advisory Commission about the bike share program.

Councilmember Giordano left the dais at the conclusion of the staff presentation.

Motion: to accept the Economic Development Quarterly Report presented by the Economic Development Manager

Motion/Second: Vice Mayor Montano/Councilmember Grilli

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

7. Ballot Measures T and Z

City Manager Tom Williams provided history and results of 1998 Measure Z and 2004 Measure T, both of which related to the preservation of hillsides in Milpitas. Residents overwhelmingly supported an Urban Growth Boundary with the first ballot measure, and then required that any change in that limit could only be by voters (not by City Council). Review of Measure Z was required in 2015 as it would expire 20 years after it was adopted by voters (or, in 2018). Staff recommended Council place this topic on the ballot for Milpitas voters in June of 2016.

Mayor Esteves invited speakers from the audience.

Jerry Epps, Milpitas resident, was pleased this report was on the agenda, and urged the Council to proceed with a ballot measure to extend the hillside protection ballot measures. He was concerned about what development could occur, if voters voted “no” to extending the hillside protections.

Robert Marini, Milpitas resident, wondered why there would be a 20-years extension and not one for ten years only. The City Manager said the 20-years timeframe would be consistent with other planning efforts, similar to the life of a General Plan.

Motion: to place a ballot measure on the June 2016 election and consider merging the two ordinances into one measure to extend current City policy on hillside development, with the inclusion of past pros/cons if possible

Motion/Second: Councilmember Grilli/Councilmember Barbadillo

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

PUBLIC HEARINGS

1. Pakistan Flag Ceremony

City Clerk Mary Lavelle presented the request from the Pakistani American Culture Center of Milpitas to hold a ground level flag ceremony on Friday evening, August 14, 2015 outdoors in the back patio outside the Committee Room of City Hall. She described the forms filed, fees paid and code requirement for this hearing prior to Council's approval. The group would celebrate the date of Pakistan independence on August 14.

Mayor Esteves opened the public hearing for comments and heard none.

(1) Motion: to close the public hearing, following no comments

Motion/Second: Vice Mayor Montano/Councilmember Giordano

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

(2) Motion: to approve the request for a ground-level flag ceremony by the Pakistani American Culture Center of Milpitas on Friday, August 14, 2015 at City Hall outdoor plaza next to Committee Room from 7:00 to 9:00 PM

Motion/Second: Vice Mayor Montano/Councilmember Giordano

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

2. Weed Abatement Program

Fire Marshal/Deputy Fire Chief Albert Zamora described the need to remove the public nuisance, namely weeds, on certain properties in the City of Milpitas. Those whose properties were cleared of weeds by the Santa Clara County Agriculture Department, following notification letters, would be liened for the costs on their property tax bill. He referred to the list of properties and owners who were notified (per list behind the draft Resolution in the Council's agenda packet). Mr. Zamora introduced Mr. Ray Moreno from the County Department of Agriculture who was present to answer any questions.

Next, the Mayor opened public hearing.

Robert Marini, Milpitas resident, asked how the notification of property owners happened. He did not think it was fair to just tax the owners after weeds were cut down.

Rustin Farsi, a long time Milpitas hillside property owner, described the March 31 deadline for abating weeds, while his contractors were not necessarily able to meet that arbitrary date. His contractor agreed to cut weeds as soon as possible, and so Mr. Farsi wanted an extension to get the work done, not to be liened by the County based on notification by the City. Mayor Esteves responded to the gentleman that he could further discuss his property with the two officials outside the Council Chambers.

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

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

(2) Motion: to adopt Resolution No. 8492 with the list of properties to be assessed for the annual Weed Abatement program for 2015

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

3. Hillside Home 1000 Country Club Drive – Open Space

Planner Cindy Hom addressed the need for amendments to permits for a house under construction at 1000 Country Club Drive. The open space easement for this property needed to be re-configured, where the property saddled the crestline of a hill. Also the lot line required adjustment. These changes, while approved already by the Milpitas Planning Commission, were required by municipal code to be approved also by City Council.

The architect for the project applicant, Ms. Melanie Turner, came to the podium and gave further description of the project, re-modeling quite a bit an already existing home. She emphasized there was no swimming pool and outdoor water features had been eliminated.

Next, the Mayor opened public hearing.

Robert Marini, Milpitas resident, asked about the impact of the construction to existing neighboring hillside homes.

Voltaire Montemayor, Milpitas resident, said there was no permanency that he knew of. Good buildings would always be fighting against gravity on a hillside.

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

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

(2) Motion: to adopt Resolution No. 8493 approving Site Development Permit Amendment No. SA14-0002 to allow for various site and building modifications, lot line adjustment and reconfiguration of an existing open space easement to an existing hillside home at 1000 Country Club Drive, based on findings and subject to conditions of approval

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

4. Sewer Rate Ordinance

City Engineer Steven Machida described actions to date for a proposed increase in the rates charged to City customers for sewer service. Primary drivers of the cost increases were related to improvements planned for the San Jose/Santa Clara Water Pollution Control Plant. These included action to reduce odor, improved drying beds and other technology advancements at the plant in coming years. Also, a study was completed and results indicated multiple options for financing those improvements. The City of Milpitas may participate with other agencies in a bond financing program over time to contribute

its fair share paying towards plant updates and improvements. Also, Mr. Machida defined the two classes of sewer service: non-residential (including commercial) and residential customers, with different rate structures for these two.

Mayor Esteves opened the public hearing at 9:36 PM.

Robert Marini, Milpitas resident, felt the city was not charging commercial customers the correct fee for sewer service. He displayed his own calculation of sewer fees. He claimed that Milpitas sewer rate charges were the highest in all of Santa Clara County and this was due to not charging proportional rates.

Voltaire Montemayor, Milpitas resident, said residents would have to spend more and share the burden, while adjusting water consumption.

Don Funch, Washington Drive, said his wife bought their house in 1975. He inquired about senior citizens on fixed income and asked why the rates were the highest in the County. He referred to Tier 1 fees for his water bill.

Mayor Esteves asked the City Engineer if the City of Milpitas did in fact have the highest rates for sewer service.

Mr. Machida replied the City had one of the higher rates, while County Sanitation District 2-3 was the highest. Other contributing agencies to the Plant were also going to have to raise their rates, as contribution to the operation of the Water Pollution Control Plant.

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

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

The City Clerk reported the number of protest letters on sewer rates received was 273 in total. This quantity was far less than the 8,979 property owners' protest letters that would be required to stop the vote on the proposed ordinance for new sewer rates.

(2) Motion: to adopt Ordinance No. 208.50, amending Chapter 2 of Title VIII of the Milpitas Municipal Code Relating to Sewer Service Charges

Motion/Second: Councilmember Giordano/Councilmember Barbadillo

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

5. Water Rates issue

City Attorney Baum explained the recent California Supreme Court decision that initiated in a case from the City of San Juan Capistrano where tiered water rates were challenged. The wide-reaching impact of the court's decision meant for Milpitas and many other cities in California that tiered water rates would no longer be legal, and that rather, "flat" or uniform water rates per unit would be applicable. Therefore, the City Council was asked to continue the public hearing that had been scheduled for this meeting. A new water rate study would be required before water rates could be proposed and adopted, via the Proposition 218 process.

The City Engineer said that it would take about two to three months to complete a new study. Staff would return to Council after that with a new proposal for water rates and new notification to rate payers.

Next, Mayor Esteves opened the public hearing.

Robert Marini, Milpitas resident, said there was a double standard here on water rates to be charged, after the increase just approved for sewer rates. He wanted proportional rates applied to both water and sewer utilities in Milpitas.

Voltaire Montemayor, Milpitas resident, said there needed to be a reserve, like a piggybank, and that flat rates like with telephone services was good.

Motion: to receive the staff report about the court case and water rates, and to continue the public hearing to a date uncertain following preparation of a new Water Rate study

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

REPORTS

11. Janitorial Contract

Two items were approved on the consent calendar.

Vice Mayor Carmen Montano expressed her desire to increase the rate of hourly pay to janitors who clean city facilities, including City Hall. She wished to raise their hourly rate to \$13.00 per hour, stating that such workers need higher pay and a living wage.

The City Manager explained that janitors were paid based on an agreement with outside contractor Varsity Services, after a competitive bid process. He also noted that City staff had met with South Bay Labor Council prior to the bid award to establish the union rate per hour for such work, even though there was no prevailing wage for janitors. He remarked that the City would likely need to re-bid this contract for total costs.

Councilmember Grilli was not sure how Council had the authority to give the raise suggested, and was concerned about City employees who had not had pay restored from past cuts. She also had not heard a figure on the fiscal impact of the changed suggested.

Mr. Williams stated that the cost to the city to pay an increase from \$9 per hour in the current contract to the rate of \$13 per hour for janitorial services would be approximately \$200,000 for one fiscal year.

Staff suggested a motion for City Council: to direct staff to analyze a new hourly wage rate for janitor service, bring that back for review by City Council, and set an affirmative wage rate in a new competitive bid contract for that service starting in January of 2016 (when current service with Varsity expires or could be renewed).

Vice Mayor Montano agreed with that recommendation, as long as the rate started at \$13.00 per hour in a new contract, and to go up proportionally for those workers above the starting rate.

Councilmember Giordano asked if there was a minimum salary set when the City went out to bid for parks services, and for the new City Attorney contract services. Staff responded no.

Motion: to direct staff to analyze a new hourly wage rate for janitor service, bring that back for review by City Council, and set an affirmative wage rate in a new competitive bid contract for that service starting in January of 2016, and starting with \$13.00 per hour rate for starting janitors at City of Milpitas

Motion/Second: Vice Mayor Montano/Councilmember Grilli

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

This matter was concluded at approximately 11:10 PM and Councilmember Giordano departed the dais and the meeting at that time.

12. Computer donations

Information Services Director Mike Luu explained that the City had about 40 used personal computers and laptop computers, which the Telecommunications Commission recommended be made available to senior residents at the Barbara Lee Senior Center. If not all of the devices were used by seniors, then these could go to students on a first-come, first-served basis.

Vice Mayor Montano wanted to urge that any remaining available computers go to students at specifically Rose or Randall Elementary Schools, for low income kids in need of technology.

Motion: to approve the Telecommunications Commission's recommendation to allow donation of recycled Personal Computers and laptop computers to seniors and students

Motion/Second: Vice Mayor Montano/Councilmember Grilli

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

13. Amend Commission By-laws

Vice Mayor Montano wanted to include private schools and Evergreen Community College extension in Milpitas in an Education section of the Economic Development Plan, in addition to Milpitas Unified School District schools. She urged inclusion of "sports" as a business category in section 3, and suggested including organizations and City Commissions in Section 2.

The Economic Development Manager replied staff would be happy to add "Education" as a category to incorporate more than the local schools.

Motion: to approve amendments to the by-laws of the Economic Development Commission based on the recommendations by the Commissioners, and include an Education section as noted

Motion/Second: Vice Mayor Montano/Councilmember Grilli

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

NEW BUSINESS

Three items were approved on the consent calendar.

17. Investment Report

In reply to a question from Vice Mayor Montano, Finance Manager Jane Corpus responded that no individual shares of stock in any company were part of the City's portfolio, as that was not permitted for municipalities by state law in California.

Motion: to receive the investment report for the quarter ended June 30, 2015

Motion/Second: Vice Mayor Montano/Councilmember Grilli

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

18. Strategic Plan Update

This item was not heard, and was continued to the next City Council meeting.

RESOLUTIONS

Four resolutions were adopted on the consent calendar.

AGREEMENTS

Eight items were approved on the consent calendar.

ADJOURNMENT

Mayor Esteves adjourned the City Council meeting at 11:20 PM in memory of Mr. Larry Voellger.

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