

MEETING MINUTES CITY OF MILPITAS

Minutes of: Special Meeting of Milpitas City Council
Date: Monday, July 18, 2016
Time: 6:00 PM
Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas

CALL TO ORDER

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

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

ABSENT: Councilmember Barbadillo

CLOSED SESSION

City Council went into closed session immediately with the City Manager and City Attorney to discuss three litigation matters. There was no announcement when they returned to the dais for the open session.

PUBLIC FORUM

None

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

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

APPROVE AGENDA

Upon motion by Councilmember Giordano and seconded by Vice Mayor Montano, the agenda for the special meeting was approved.

UNFINISHED BUSINESS

1. Initiative Petition - Ballot Measure Regarding Water Rates

City Engineer Steven Machida gave a brief report with history of the water rates in Milpitas, including the Proposition 218 hearing process and the City Council's adoption of new water rates last December. Consultant firm Bartle Wells prepared a report to provide the Council with the impacts of such an initiative as presented by three residents in January.

Doug Dove from Bartle Wells listed the water rates as adopted by City Council (not tiered) and those recommended in the initiative measure (with three tiers). He described specific negative fiscal impacts of the initiative as proposed if it was approved and implemented.

Mr. Machida identified work that would not get done, if rates did not provide enough revenue, in terms of infrastructure needs that would go unfunded and not taken care of. He talked about operational mandates and impacts also.

Councilmember Giordano asked if the City Council was obligated to provide water and to ensure that the public can get safe drinking water.

City Attorney Chris Diaz replied yes, as the public health and safety issue. The duty was to provide safe water to customers. It was an essential government function, and the City Council could not impair that service.

Vice Mayor Montano inquired about the percent of improving water pipelines which could withstand seismic events. Mr. Machida replied regarding locations along north-south corridors, with secured joints, and estimated about 10%.

Mayor Esteves asked about how staff assessed the urgency of these needs.

Mr. Machida displayed some photos of past water main pipes that had broken, and work that had been done on replacement of critical water infrastructure elements.

Next, City Attorney Chris Diaz addressed the Council about responsibilities and legal ramifications of such an initiative. He identified several legal concerns.

Councilmember Giordano summarized options and asked the attorney what if the initiative was only about eliminating the capital surcharge. Mr. Diaz replied that was still of concern, if the result was then not enough revenue.

City Manager Tom Williams provided further comments on water system-wide costs. There were \$300 million in unfunded infrastructure needs for the water system.

Mayor Esteves commented with his concerns about the initiative and the requirement to maintain the safety of the water system and its costs to provide.

Vice Mayor Montano was pleased that the City had not overcharged customers for water service.

Mayor Esteves pointed out the full disclosure that was included in the notice to ratepayers, which did include a capital surcharge amount and what that was for, specifically.

Next, the Mayor invited speakers from the audience to the podium.

Robert Marini, Milpitas resident, asked for the definition of one part of the Proposition 218 regulations in the state constitution. The bond would partly be for services they would not receive (e.g. for wells, irrigation water). The City did not take into account new homes coming online, and to pay for meters connecting to City pipelines.

Mr. Diaz and Mayor Esteves responded to the speaker.

Mickey Skelson, Milpitas resident, said the City Council did not touch on the whole thing – the water rates initiative. He provided some calculations.

Sylvia, a resident, felt it was ridiculous that Council would not give two more minutes each to the speakers at this meeting. It was ridiculous, shameful, and they should be ashamed of themselves. She stayed silent for the remainder of her speaking time.

Jennifer Strohfus, Milpitas resident, objected to the calculations of revenue from water rates, and claimed her group's total was not the same as that presented by City staff. She objected to water meter charges. She referred to water leaking and water loss, and thus loss of revenue from that. San Juan Capistrano was still using tiered water rates that other cities and districts were continuing to use.

City Attorney Diaz remarked further about tiered rates and the effect of the lawsuit outcome for City of San Juan Capistrano.

Harley, of Levin Street, a 60 year city resident, talked about \$2 million extra earned by the City on the current new rates.

Michael Tsai, Milpitas resident, felt the previous speakers represented some people in Milpitas who did not wish to pay the higher, new rates. He said the City Manager noted that water infrastructure was expensive, and he agreed.

City Manager Williams addressed the transfer of funds, from the water fund to the general fund. It was correct for how the one organization operates under one Director of Public Works. It was a proper accounting move within government operations.

Joseph Weinstein, Milpitas resident, addressed the City Attorney saying he basically offered two choices to City Council. He urged Council to find a third option. He did not want to pay more money for taxes or water. He said to figure out a different way to approach it.

Mark Tiernan, Milpitas resident, felt there must be a better way. If Council adopted the initiative, the City would be headed for serious financial problems. If it went on the ballot and was approved, that would be challenged legally. So there had to be a better way.

Councilmember Grilli asked the City Attorney what the options were for Council. Mr. Diaz responded by explaining that the California Elections Code mandated one of two actions, and he did not recommend either one. If not one of the two, City Council could do nothing. Then, legal risks would arise. Council could vote to put it on the ballot, respecting the efforts of proponents. Then, the city could go to court to ask a judge, was this even legal. Judge could direct staff to take it off the ballot. Or, the Council could opt to adopt the ordinance but the City Attorney did not recommend that.

Vice Mayor Montano noted the two issues: the initiative was illegal (in terms of keeping the water system safe and reliable, and the Council had a legal duty to allow an initiative to move forward to the voters. Voice of the people was important and so there was a dichotomy here.

Mayor Esteves wanted to keep safe and reliable water for everybody now and in the future, with planned investment. Or the financial impact was really tremendous (for costs of doing infrastructure work – especially if not done). The legal aspect was another thing. He proposed to take no action at this meeting.

Councilmember Giordano was not confused. The Council got the results of the initiative signatures, and it qualified. Now they had the City Attorney's analysis. The initiative was illegal per Proposition 218 and she believed they could not send this to the voters.

Councilmember Giordano said her motion was to note receipt and file the report from the City Attorney as received and to take no further action.

Vice Mayor Montano felt the bottom line was money. The question she had was whether or not there was a way that the meters could give incentive for those who used less water in order to help those who could not afford the higher rates.

Ms. Giordano's motion was then seconded by Mayor Esteves, followed by further discussion among the Councilmembers.

City Manager Williams responded that the San Juan Capistrano lawsuit resulted in the City not being able to help seniors or low income residents in terms of paying for water. The City was required to use the same rates for all.

Councilmember Grilli believed this proposal was not in compliance with Proposition 218, that the rates were not covering the known costs for the service. But the Elections Code said to put it on the ballot. She'd rather do that and then ask a judge for declaratory relief.

Vice Mayor Montano felt that the voice of the people superseded Proposition 218 and so let voters decide.

Mayor Esteves agreed with the approach not to do anything.

Motion failed on a vote of:

AYES: 2 (Esteves, Giordano)
NOES: 2 (Grilli, Montano)
ABSENT: 1

Since the motion failed, there was no explicit action taken.

City Attorney Diaz responded that this was a clear split, so the City Council needed to have a fifth Councilmember present to decide. This matter would have to come back at the next regular meeting for a vote.

2. Water System Losses

Mr. Machida described and defined water system loss. Water loss was not only due to “leaky pipes” but involved other actions, such as use of water for firefighting, water main breaks and system leaks, health and safety, unauthorized use and construction work. He discussed water meter reading and new technology. New water audits were required in two years, and part of that was requiring reduction in water loss.

Vice Mayor Montano asked the type of material the pipes were made of, regarding those that had broken recently. Those replaced would be constructed of a different, newer more durable material, staff explained.

Staff also expressed that water meter replacement by AMI equipment was being planned.

Mayor Esteves next invited speakers from the audience.

Robert Marini, Milpitas resident, said the City was still losing 608,000 gallons of water per day, and residents had to pay for that loss. He complained about higher costs paid by residents that should not be passed on.

Councilmember Giordano asked if water loss was prevalent in other districts and cities. Mr. Machida responded it was normal and typically near 10%.

Councilmember Grilli noted the focus seemed to be on leaky pipes and what needed to be done for emergency response. Keeping the community safe was important and she asked about irrigation water source.

Martin Skelson, Milpitas resident, mentioned 11% water loss and asked for where it showed the City was paying to fix leaks. He complained about information on chart in Urban Water report.

Councilmember Giordano made a motion to note receipt and file the report. Councilmember Grilli seconded her motion which was approved by a vote of 4 Ayes and 1 Absent.

3) Water Rate Fact Sheet

Mr. Machida presented the fact sheet prepared about water rates adopted in December of 2015 and implemented in 2016. For instance, he pointed out that \$1.00 buys 116 gallons of water. A comparison chart of Milpitas versus many other bay area cities was displayed.

Mayor Esteves remarked that Milpitas was lowest for the Fixed Meter Charge to customers.

Next, the Mayor invited speakers.

Robert Marini, Milpitas resident, noted that on the chart staff put Milpitas in the middle while the water charge was the highest in the county. He mentioned campaigning and hypocrisy.

Councilmember Giordano responded to him. She was glad facts were there and thanked staff for bringing this to the public and made it available on the website.

City Manager Williams referred to SFPUC water and its high quality. He compared Milpitas to other cities that enjoyed the same water source.

Martin Skelson, Milpitas resident, remarked on the comparison given.

Upon motion by Councilmember Giordano, seconded by Vice Mayor Montano, the City Council voted unanimously to note receipt and file the staff report.

4) Solid Waste Disposal Fact Sheet

Mr. Machida described the fact sheet on the solid waste disposal contract for the City.

Councilmember Giordano felt that Republic Services was not eligible to bid on this contract.

Vice Mayor Montano remarked on the odor comment on the fact sheet. The composting facility probably contributed to odor. She would like to see it listed on the fact sheet.

Mr. Machida then reviewed four sections of the disposal contract. Councilmember Grilli objected to the title "Reducing Odors" as a category since Milpitas would necessarily be reducing odors, just simply by no longer contributing to possible odors (when garbage would be brought to Guadalupe Landfill).

Vice Mayor Montano felt composting and recycling should be included in the first section.

City Manager Tom Williams clarified that would be done by a future contractor, not yet determined.

Mayor Esteves was happy with the fact sheet. He had been concerned about misinformation out in the community. Costs were explained and the fact sheet showed costs would be cheaper for disposal with the newer company.

Mayor Esteves invited speakers to comment.

Brock Hill, Premier Recycling, responded about bids for disposal, which he had read. He wanted to maintain non-exclusive recycling for construction materials.

Tom Valore, Milpitas resident, asked what this was supposed to accomplish. There were not a lot of facts on this sheet, he felt. It was unclear on savings. Entire costs associated with disposal were not included, since some was included and buried in the collection contract. Reducing odors – if no longer sending garbage to Newby Island - did not mean that odor went away.

Vice Mayor Montano commented that on recycling, there was a Commission. She asked why the Council had not heard from it. Mayor Esteves said the Council had heard from the Recycling and Sources Reduction Advisory Commission. The City Manager responded that the Commissioners had recommended to move forward with the award of the contract.

Upon motion by Councilmember Giordano, seconded by Vice Mayor Montano, the Council voted unanimously to note receipt and file this fact sheet.

City Manager Tom Williams said thank you to City Council for its leadership on these tough topics, which had been discussed for many years in Milpitas.

ADJOURNMENT

Mayor Esteves adjourned the Special City Council meeting at 9:51 PM.

The foregoing minutes were approved by Milpitas City Council on September 6, 2016.

*Mary Lavelle
Milpitas City Clerk*