

**MEETING MINUTES
CITY OF MILPITAS**

Minutes of: Joint Meeting of Milpitas City Council and Successor Agency to the Former Redevelopment Agency
Date: Tuesday, August 2, 2016
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 joint meeting of all three entities to order at 6:00 PM. City Clerk noted the roll.

PRESENT: Mayor Esteves, Councilmembers Giordano and Grilli

ABSENT: Councilmember Barbadillo was absent at roll call and arrived in Closed Session near the start. Vice Mayor Montano was absent at roll call, for Closed Session and the beginning of the open Council meeting. She arrived at 7:41 PM.

CLOSED SESSION

City Council convened in Closed Session to discuss four litigation matters and performance evaluation of City Manager.

City Council then convened in Open Session at 7:04 PM.

ANNOUNCEMENT

No announcement out of closed session.

PLEDGE

Boy Scouts Troop No. 92 led the pledge of allegiance.

INVOCATION

Councilmember Giordano invited Pastor Johnson Chui from Chris Community Church to give the invocation.

MEETING MINUTES

Motion: to approve the minutes of June 21, 2016 City Council meeting

Motion/Second: Councilmember Grilli/Councilmember Giordano

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

SCHEDULE OF MEETINGS

Motion: to approve Council Calendar/Schedule of Meetings for August 2016

Motion/Second: Councilmember Giordano/Councilmember Barbadillo

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

PUBLIC FORUM

(Name), Milpitas resident, spoke about a “No Right Turn” sign at Piedmont and Ridgemont. He described undesirable consequences and an unsafe situation, describing the sign as not good for residents in that area. Traffic backs up now and people are angry about this decision. He asked the City to take down the sign.

City Engineer Steven Machida responded he would respond to residents as well as City Council after assessing the sign and its location, along with safety concerns.

Paul Higgs, Milpitas resident, said the increased water bill is just ridiculous. His bills have gone up 220% and he did not use more water than he used to, much more frugally actually.

Rob Means, 1421 Yellowstone resident, asked three City Councilmembers to consider supporting the "Move to Amend" proposition 59, which two Councilmembers already pledged to support the effort to get money out of politics and say that money was not speech.

Robert Marini, Milpitas resident, commented that it was immoral to transfer fees from the people who do not receive the service to the people that do. As for irrigation water, don't overcharge for the service, while transferring costs to the public even if not illegal.

Steve Siddell, Milpitas resident, remarked on the recent news about CalPERS low percent return on its investments. He spoke of the outstanding job being done by local employees. He would be interested to hear from local experts on finance, and how the City was planning to have enough money to fund existing employees and retired persons.

Voltaire Montemayor, Milpitas resident, knew both sides and needed know where we're coming from sinc all sides wanted respect.

ANNOUNCEMENTS

City Manager Tom Williams announced that this Thursday, August 4 would be the annual National Night Out celebrated in the City of Milpitas, with more than 35 local neighborhood events planned and public safety officers would be out as well.

Mr. Williams noted the significant fires that were ongoing in Monterey County, where one of the city's Fire Department strike teams were sent to battle fire. Deputy Fire Chief Rick Frawley came to the podium to show photos of fire suppression activities, along with fire line paramedic duty.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

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

City Attorney Diaz reported that Councilmember Barbadillo would step out from the Chambers for Item No. 3, due to the nearby location of his business office to the project.

APPROVAL OF AGENDA

Motion: to approve the meeting agenda, as re-arranged for the order of items to be heard

City Manager Williams said staff requested that Item No. 15 for Senior Advisory Commission be heard first. He also requested Public Hearing Item No. 3 (Development at 720 Montague) be the last public hearing to be heard.

Mayor Esteves said he wanted to move No. 15 (Senior Advisory Commission workplan) and No. 11 (library hours) to the consent calendar, with no discussion.

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

CONSENT CALENDAR

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

As requested above, the Mayor's request was to place agenda items No. 11 and No. 15 onto the consent calendar.

Vice Mayor Montano had arrived at the meeting and came to the dais at 7:41 PM.

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

- *23. Resolution Adopted Resolution No. 8571 awarding a contract to O’Grady Paving, Inc. as the lowest responsible bidder submitting a responsive bid for the Street Resurfacing 2016 Project No. 4280, in the amount of \$1,977,749.
Authorized City Engineer to negotiate and execute contract change orders for Street Resurfacing 2016, Project No. 4280 in an aggregate amount not to exceed a construction contingency of \$200,000.
- *24. Resolution Adopted Resolution No. 8572 annexing real properties within Tract No. 10328 into Community Facility District 2005-1.
Approved final map of Tract No. 10328, including approval of street names and acceptance of all offers of dedications as stated and depicted on the final map upon completion and acceptance of improvements.
Authorized the City Manager to execute the Subdivision Improvement Agreement.
- *25. Resolution Adopted Resolution No. 8573 declaring intention to annex real properties within Tract No. 10324 into Communities Facilities District No. 2008-1 and to levy and collect special tax for public services.
Set a public hearing date on September 6, 2016 at 7:00 PM in the Council Chambers.
Directed the City Clerk to give a notice of public hearing in accordance with applicable state law.
- *26. Resolution Adopted Resolution No. 8574 declaring intention to annex real properties within Tract No. 10305 into Communities Facilities District No. 2008-1 and to levy and collect special tax for public services.
Set a public hearing date at 7:00 pm on September 6, 2016 in the Council Chambers.
Direct the City Clerk to give notice of public hearing in accordance with applicable state law.
- *28. Resolution Approved Amendment No. 3 to the agreement with Peelle Technologies, Inc. for document imaging services extending it from July 31, 2016 to July 31, 2018 at the same annual not-to-exceed amount of \$75,000.
- *29. Amendment No. 3 to Authorized the City Manager to execute a three-month agreement with Premier Recycle
Peelle Tech. Agreement Company with the option to execute a maximum nine-month extension.
- *30. Agreement with Premier Approved and authorized the City Manager to execute an agreement with HydroScience
Recycling Engineers, Inc. for on-call support services for the City’s recycled water programs not to exceed \$50,000.
- *31. Amendment No. 1 to Cost Authorized the City Manager to execute Amendment No. 1 to the agreement with West
Sharing Agreement Valley Sanitation District, Cupertino Sanitary District, County Sanitation District No. 2-3
and Burbank Sanitary District Cost Sharing Agreement for the Common Interest Group in
an amount not to exceed \$300,000.
- *32. Pay for Cost of Weed Authorized payment of invoices in an amount not to exceed \$60,000 to San Jose
Abatement by San Jose Corps Conservation Corps for weed removal from the operating budgets for Streets, Trees and
Landscape, and Utilities.
- SUCCESSOR AGENCY** Adopted Resolution No. SA9 approving the sale of property and authorizing the Executor
*33. Adopt Resolution Director of the Successor Agency to the Former Milpitas Redevelopment Agency to
execute all escrow documents including the purchase and sale agreement for the sale of
property located at 86 N. Main Street (APN 028-24-025) to Harpreet and Neha
Choudhary.

PUBLIC HEARINGS

- 1. 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 stated that a representative from the County Department of Agriculture who was present to answer any questions.

Next, the Mayor opened public hearing.

Millie, a long time Milpitas resident, spoke representing a church property located on Piedmont, got all the notices and understood the notifications and the need to cut down weeds. The fines were excessive she felt, specifically the failed inspection cost was too high and a punishment.

Councilmember Giordano responded that fees levied were across the board on all properties. She asked the City Attorney if there was any way to protest the fines. City Attorney Chris Diaz responded that this was the purpose of this hearing.

County representative Mr. Moe Kumre said he would be happy to discuss the costs with the speaker outside of the meeting.

City Attorney Diaz legally advised putting this item off for a vote until later in the evening, to learn if the County Agriculture staff and the resident work out anything, prior to voting on the resolution for weed abatement program.

Next speaker, Voltaire Montemayor, Milpitas resident, felt the timing of the notice was enough, for the owners to make a correction.

Motion: to continue this public hearing and move it to be the last public hearing item, and to come back a little later to close the hearing and vote on the resolution

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

At 9:35 PM, Mayor Esteves returned to this public hearing matter.

At the podium, Fire Marshal Zamora and County staff Mr. Kumre reported they had resolved the issue with the speaker heard earlier.

The Mayor continued the hearing for any additional speakers, however there were none.

Motion: to close the public hearing, after hearing two speakers earlier

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

(2) Motion: to adopt Resolution No. 8566 with the list of properties to be assessed for the annual Weed Abatement Program for 2016

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

2. 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 Sunday evening, August 14,

2016 outdoors in the back patio outside the Committee Room of City Hall. She described the forms filed and code requirement for this hearing prior to Council's approval. The group would celebrate the date of Pakistan independence on August 14.

Mr. Mohammed Aboobakar of PACC described the event to the Mayor and Council.

Vice Mayor Montano asked if this was an Independence Day. Mr. Aboobakar replied yes, for the nation of Pakistan, founded on that date in 1947.

Mayor Esteves opened the public hearing.

Voltaire Montemayor, Milpitas resident, attended the event last year when it was very successful. He was supportive of this flag ceremony.

(1) Motion: to close the public hearing, following one speaker

Motion/Second: Vice Mayor /Councilmember Giordano Montano

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 Sunday, August 14, 2016 at City Hall outdoor plaza next to the Committee Room from 7:00 to 9:00 PM

Motion/Second: Councilmember Grilli/Councilmember Giordano

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

3. Development Project at 720 Montague

Contract Planner Lisa Costa-Sanders described the revisions made to the development proposal at 720 Montague Expressway, which the City Council had heard earlier in May. Additions were made to landscaping, with more trees including Jacaranda, revised parking, and a revised plan at elevation entry.

Mayor Esteves asked the planner about the exceptions the applicant had requested. She said those were a density bonus, parking spaces to include some compact and tandem, and a reduced balcony sizes for 15% of units.

Applicant Badru Valani with the architect from KTG Y Group gave a presentation with slides to display the improved changes to the project that had been presented to City Council a few months ago. She said the project would go for a LEED Silver rating for Commercial buildings.

Mr. Valani reported the many community benefits of this project to the City of Milpitas, including 120 construction jobs, and many required fees paid to the City along with a \$60,000 donation to General Fund for City's discretion.

Mayor Esteves wanted the donation to go to the Community Benefit Fund (identified by the City Manager) not the General Fund.

Responding to Councilmember Giordano, the City Manager said staff would bring this issue back to City Council about how to spend or allocate those funds on a park or art work, or other recommendation.

Vice Mayor Montano did not see art listed as part of the project. The applicant replied there would be an art piece on the Montague side, outside at the main entry. Details were being worked out.

Utilities Commission. She further explained the waiver by the state, and a call for a specific percentage of water conservation goals, going from Stage 2 to Stage 1, which could allow for three days of watering yards allowed instead of two.

Ms. Hawk responded to a variety questions and comments from Councilmembers Giordano, Grilli and Barbadillo on water savings required versus the current drought situation in California.

Councilmember Grilli asked specifically about golf courses and use of recycled water at those hillside facilities. The Public Works Director responded that part of the build out of supplying that water would include recycled water line pipes being brought up the hillside, including building a pump station to move it uphill.

Councilmember Barbadillo commented on various water conservation issues, and asked for more data and statistics. Partly in response to Mr. Barbadillo, City Manager Williams commented on the increasing costs of wholesale water. Recently city was notified of the latest cost increases on July 1 of 12% and 20% increases from the City's two suppliers.

Next, Mayor Esteves opened public hearing.

Robert Marini, Milpitas resident, felt the staff was saying it wanted the public to use more water but the City did not follow the rules, and there was a double standard going on. It was painful for people to reverse what had been done, once the conservation amount was reduced.

City Manager Tom Williams reported firmly that the City had absolutely conserved water, as a municipality, over the past couple of years.

Jorn Eldridge from Santa Clara Valley Water District was present along with Richard Santos of the Board of Directors, and he described the reduction from 30% to 20% as the mandate water reduction level to preserve its water supply. He urged 20% conservation target for the City of Milpitas as well.

Richard Santos, District Director, thought of this issue as common sense. This issue was simple economics.

Steve Siddell, Milpitas resident, agreed with the City Manager about water costs and percent of conservation needed. He also recommended continuing the moratorium on swimming pools.

Martin Skelson, Milpitas resident, said water consumption had gone down, but prices had been going up and up. People were not going to start using a lot more water again. Most people had changed the landscaping at their homes.

Voltaire Montemayor, Milpitas resident, said the drought response was still good. Just doing precautionary efforts, but could not take it back.

Tom Valore, Milpitas resident, presumed that what was talked about was not an additional 10, 15, or 20% savings, as residents had originally been asked to save in the City.

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

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

Councilmember Giordano was in favor of 20%, or maybe 18%, water conservation restriction (not the 15% as recommended by staff in the ordinance).

Councilmember Barbadillo wanted to keep a conservative view on the drought. He did not want to remove restrictions on new construction, new landscaping, golf courses and swimming pools and he agreed with 20% proposed restriction like the Water District representatives requested earlier at this hearing.

Mayor Esteves sought to understand why was the State of California was requesting 0% restrictions on water conservation. Public Works Director Hawk responded and the stated wanted to provide flexibility to local water service providers like cities and districts that retailed water to customers.

Councilmember Giordano said she could break this down into two motions, one on water conservation rate percentage and then another on Stage One measures (or not).

Councilmember Grilli supported the target of 20% reduction.

Mayor Esteves asked SCVWD Director Richard Santos about volume, rate, charges to customers and other details of the water provided by that supplier.

Mayor Esteves asked Ms. Hawk for a report back on how much water was used and what City paid.

(2) Motion: to set the water conservation reduction target to 20%

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

(3) Motion: to establish Stage One water restrictions, as defined by staff (on chart)

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

(4) Motion: to adopt Resolution No. 8568 implementing Stage One Water Conservation Measures and as modified with the 20% conservation goal (not 15%)

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

Then, City Attorney Chris Diaz read aloud the title of Ordinance No. 240.5, "An Ordinance of the City Council of the City of Milpitas Amending . . ." with one change to % of conservation

(5) Motion: to waive the first reading beyond the title of Ordinance No. 240.5

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

(6) Motion: to introduce Ordinance No. 240.5, as modified to include 20% water conservation goal

Motion/Second: Councilmember Giordano/Councilmember Grilli

Motion carried by a vote of:

AYES: 3

NOES: 2 (Barbadillo, Montano)

Vice Mayor Montano said she voted no because if residents had to conserve 20%, then swimming pools should not be filled. Councilmember Barbadillo said his reason was the same.

Following the conclusion of Item No. 3 above, Councilmember Grilli asked if after discussion of No. 5, the Council could go directly to agenda items no. 12 and no. 27 since there were people waiting for those. Mayor Esteves agreed.

UNFINISHED BUSINESS

5. Initiative Petition for Ballot Measure on Water Rates

City Engineer Steven Machida reviewed history of the water rates ordinance proposed by voters in a ballot measure initiative petition. He informed the City Council about the drastic impact to the entire water system if the proposed rates were to be adopted and discussed why this proposal was not legal. He identified a long list of mandates and required system maintenance items that would not be able to be funded nor completed.

City Attorney Chris Diaz spoke of major legal concerns about this initiative. Proposition 218 process could be used to reduce or repeal utility rates. It was not designed to have an all new rate structure, so it's not consistent with that state law. Under Elections Code, there was a mandate Council to take one of two choice actions. Voters cannot do what Council cannot do (rates against the San Juan Capistrano case). Tiered rates with no justification study cannot be done by Council but petitioners were trying to get voters to do that. Proportionality was a major issue with the tiered rates. Tiers must be tied to cost of service.

Elections Code offered two choices to the City Council and a Resolution was in the agenda packet. The City Attorney described that court action could result, if the City Council voted to place this matter on the ballot, and it could also result if no action was taken.

City Council members engaged in much discussion over the various options offered by the City Attorney and reviewed what had occurred up to this point.

Next, Mayor Esteves asked for speakers from the audience.

Rob Means, 1421 Yellowstone Ave, quoted from the court decision and Proposition 218 regulations. He felt it was not right not to bring the initiative to the voters.

Robert Marini made three points. One was that the notice for the proposition 218 hearing was illegal since it did not disclose all charges, including surcharge and the bond issue. Charging residents for leaking pipes (lost water) was not right.

Martin Skelson, Milpitas resident, discussed tiered rates and how those were structured. He discussed fees and revenue that would be generated and lost revenue. He said to take off cost for meters. He did not understand what Council was doing.

Voltaire Montemayor, Milpitas resident, referred to the San Juan Capistrano case. A third party should decide for the City. Deadlock.

Motion: to note receipt and file the staff report from the City Attorney and vote to take no action at this time

Motion/Second:

Councilmember Giordano/Councilmember Grilli

Motion carried by a vote of:

AYES: 3

6. Water Rates Economics This matter was not heard and would be continued to the next meeting.

7. Capital Projects in TASP This matter was not heard and would be continued to the next meeting.

REPORTS

12. Consider Removing Ballot Measure – by Resolution Mayor Esteves asked for reconsideration of his vote in favor last June to call for a ballot measure regarding Town Center zoning, and not allowing any residential development at all unless voters approved that. He had reconsidered the long term future of the Town Center development and future possibilities for projects in that area. He wished to rescind his prior vote. Current ordinance is already in existence by the City Council.

The Mayor asked for comment from audience.

Farouk from Shappell thanked the City Council for reconsidering this ordinance. He was glad they would take a thoughtful look at the effect it would have on retail and residents in the Town Center. To keep retail vibrant and competitive with other areas like Great Mall and McCarthy Ranch, flexibility was needed. The environment changes fast nowadays, and internet sales had changed retail too. Mixed use was an important option to be considered.

Councilmember Barbadillo noted that the Council had talked about this idea last year.

Mayor Esteves commented further on his rationale for changing his vote on this ballot measure ordinance.

Vice Mayor Montano felt that more commercial space was needed in the City. She believed in keeping the Town Center are for retail and commercial, not for residential uses, so she agreed with taking the ordinance to the voters.

Motion: to adopt Resolution No. 8569 rescinding adopted Resolution No. 8563, and direct the Registrar of Voters not to bring the ballot measure to voters regarding zoning the Town Center

Motion/Second: Mayor Esteves/Councilmember Giordano

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

RESOLUTIONS

27. Resolution Calling for Ballot Measure re: Parks City Attorney Chris Diaz explained the ballot measure, calling for voters to consider approving an ordinance that would require any future change to zoning on parks and open space to go to the voters, requiring a 2/3 approval vote.

Steve Munzel, Milpitas resident, member of the Parks, Recreation and Cultural Resources Commission, involved with group hoping to have a museum, supported this proposed ballot measure to protect open space and parks, which are important resources in the city. Owned by everyone so everyone (voters) should decide about those land uses. Had a question about whether museum would be allowed without going back to voters for 2/3 vote.

The City Attorney proposed striking one section of language in the proposed ordinance for voters to satisfy the question raised by Steve Munzel about a future museum, since the definition of museum was not clear.

Tom Valore, Milpitas resident, asked if residents could not rely on elected representatives, then why go to the people? It was due to a fear of acting inappropriately, it seemed. Any

decision should be made by a majority vote, so the 2/3 requirement would make decision making awful difficult. He felt all ought to rely on the people that were elected as representatives to make such decisions. It costs a lot for a ballot measure, and if the City Council was acting responsibly, then it did not need to preclude future action by a future Council.

Mayor Esteves supported putting this matter on the ballot. Open space and parks were necessary. Councilmember Giordano agreed with him for the protection of park space.

Motion: to adopt Resolution No. 8575 calling for a ballot measure on November 8, 2016 asking voters to adopt an ordinance related to parks and open space; and, Councilmembers Barbadillo and Giordano were designated to write a ballot argument in favor

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

The City Council then determined to continue items no. 6 and no. 7 to the next meeting.

The City Attorney asked the City Council, upon returning to the Consent Calendar agenda item No. 33 for a moment, upon adoption of a Successor Agency Resolution regarding the purchase and sale of City property, Mr. Diaz asked for their clarifying vote. That would make a vote to permit the City Attorney to amend the purchase and sale agreement, only as necessary, to protect the City and the buyer.

Motion: to reconsider and reaffirm adoption of Successor Agency Resolution No. SA9 granting the City Attorney discretion to amend the purchase and sale agreement for 86 N. Main Street

Motion/Second: Councilmember Grilli/Councilmember Giordano

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

ADJOURNMENT

Mayor Esteves adjourned the joint City Council/Successor Agency meeting at 11:50 PM.

The foregoing minutes were approved by Milpitas City Council on August 16, 2016.

Mary Lavelle
Milpitas City Clerk