

**Draft MEETING MINUTES  
CITY OF MILPITAS**

**Minutes of:** Meeting of the Milpitas Oversight Board of the  
Successor Agency  
**Date:** Thursday, November 14, 2012  
**Time:** 4:00 PM  
**Location:** Milpitas City Hall Committee Room  
455 E. Calaveras Blvd., Milpitas, CA

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**CALL TO ORDER**

Chairman Don Gage called the meeting to order at 4:02 PM.

**ROLL CALL**

**MEMBERS PRESENT:** Don Gage, Mike Mendizabal, Emma Karlen, Michael Murdter, Bruce Knopf, and Marsha Grilli

**MEMBERS ABSENT:** Armando Gomez was absent at roll call and arrived at 4:03 PM.

Also present were Milpitas City Manager/Successor Agency Executive Director Tom Williams, Milpitas City Attorney Michael Ogaz and contract Attorney Nancy Miller of Miller & Owen.

**PUBLIC FORUM**

None.

**APPROVAL of MINUTES**

Board Member Grilli moved, seconded by Board Member Gomez, approval of the meeting minutes of October 4, 11, and 23, 2012. By unanimous vote, they were approved.

**APPROVAL of AGENDA**

Milpitas City Attorney Mike Ogaz requested to address the Board. He commented that the Resolutions to be considered by the Board at this meeting had only been received by e-mail on this date, there were some typed errors, and so he sought more time to review the documents before the Board considered them. He suggested continuing the vote on four Resolutions to the next meeting.

Attorney Nancy Miller responded, remarking that the documents were prepared based on actions at the last Oversight Board meeting. She offered to correct any typographical errors, following adoption, prior to the Chairman signing the official copies.

On a motion by Board Member Murdter, and seconded by Board Member Grilli, the agenda was approved by a vote of 5 in favor and 2 opposed (Karlen and Gomez).

**ACTION ITEMS**

**A. Resolution – amending previous resolution**

Attorney Miller explained that the first resolution was brought forward based on a letter sent by the state Department of Finance regarding administrative costs. Mr. Ogaz commented that if a contract for legal services was based on the administration cost allowance, the City objected and believed it was not authorized.

Board Member Emma Karlen objected to language in the draft Resolution, and requested to use the word “deleted” not amended, at the top of page two in reference to text that would be removed from the agreement with the law firm.

On a motion by Board Member Murdter, and seconded by Vice Chair Mendizabal, Milpitas Oversight Board Resolution No. 6 was adopted by a vote of 5 in favor and 2 opposed (Karlen and Gomez), including the change from “amended” to “deleted” on page two.

Resolution No. 6 is a Resolution of the Oversight Board of the Successor Agency of the Former Milpitas Redevelopment Agency Amending Contract with Outside Legal Counsel in Response to

Department of Finance Letter Relating to Funding of Oversight Board Legal Services through the Administrative Cost Allowance.

**B. Resolution** – administrative budget

Attorney Miller stated she would edit an incorrect reference to City of Morgan Hill in the resolution presented, and correct it to City of Milpitas.

Board Member Karlen objected to a statement on page 2, in fourth “Whereas” section, referring to the ROPS and provision of the administration budget. She had in fact had provided it to the Board, which did, in fact, previously adopt that budget after she responded to questions. Therefore, she asked to remove that reference in the draft Resolution. Board Member Murdter moved this action, and it was seconded by Board Member Knopf.

Further discussion was held regarding the administration budget. Mr. Tom Williams inquired several times as to, if there were insufficient funds to pay the legal services invoice of the Successor Agency, how an invoice would be paid. Chairman Gage noted that Milpitas was in the same boat as other cities, whose Oversight Boards he also served.

On a motion by Board Member Murdter, and seconded by Board Member Knopf, Oversight Board Resolution No. 7 was adopted by a vote of 5 in favor and 2 opposed (Karlen and Gomez), including a deletion of the Whereas section noted above, per Mrs. Karlen’s request.

Resolution No. 7 is a Resolution of the Oversight Board of the Successor Agency of the Former Milpitas Redevelopment Agency Directing Successor Agency Staff to Provide a Report on the Year-To-Date Expenditures Under the Current Administrative Budget, to Substitute Legal Counsel and Staff Under the Approved Administrative Budget, and Direct Staff to Assist in the Transfer of Responsibilities.

Vice Chair Mendizabal inquired of the County staff about who would provide the administrative services, referenced in the Resolution. Mr. James Williams of County legal staff reported that his office had reached out to a retired clerk, who was available for this assignment.

Mr. Tom Williams then asked Mr. James Williams if he had been the attorney who crafted the draft Resolutions for this meeting, and Attorney Miller indicated he did not have to answer.

**C. Resolution** – amend Rules and Regulations

Revised “Rules and Regulations” were presented to the Board for consideration. A red-lined version included changes in meeting administration, location and dates of regular Board meetings. Consensus was reached to continue holding meetings at the Milpitas City Hall Committee Room.

Board Member Karlen asked to strike the sixth “Whereas” section in the draft Resolution, since it was incorrect. City Attorney Ogaz objected to the reference to “willful disregard” and asked to strike that from the document. Mr. Tom Williams agreed on behalf of the City that the Committee Room would continue to be available for meetings and that the City could post the agendas, as necessary.

On a motion by Board Member Knopf, and seconded by Vice Chair Mendizabal, Milpitas Oversight Board Resolution No. 8 was adopted by a vote of 5 in favor and 2 opposed (Karlen and Gomez), including amended language to remove the 6<sup>th</sup> “Whereas” paragraph on page 2 and permitting meetings to occur at City Hall Committee Room when scheduled.

Resolution No. 8 is a Resolution of the Oversight Board of the Successor Agency of the Former Milpitas Redevelopment Agency Amending Rules and Procedures to Allow for Contract Staff to Perform Administrative Duties as Directed by the Oversight Board.

**D. Discuss documents** related to Milpitas Economic Development Corporation (EDC)

Board Member Knopf clarified questions he had, about the fiduciary responsibility of the Oversight Board, and he referred to the state’s direction by letter to the Successor Agency to transfer assets from the EDC back to the Successor Agency. He noted court actions, claw back provisions in state law, need to spend funds in compliance with legislation, agreement between the City and the EDC, and eligibility of projects approved by EDC Board of Directors.

Mr. Knopf sought information on projects including the City Hall Audio Visual Equipment, the Wrigley-Ford Creek CIP, a contract with law firm of Goldfarb & Lipman, and more. City Attorney Ogaz said the City would not respond to these questions, and would produce copies of all contracts requested by e-mail to all Oversight Board members.

Chair Gage supported the request made by Mr. Knopf and commented to City staff, that he and the Board continued to seek detailed response of the information. Mr. Knopf felt there was a possible breach of contract between the City and the Corporation and there could be litigation, wherein the Successor Agency would need to sue EDC for the return of assets.

**E. Resolution** – seeking EDC documents

Board Member Knopf stated this resolution was the third request for information being made to the City for records of the Economic Development Corporation. He had not yet viewed an e-mail sent by the Milpitas City Attorney on this date, to which Mr. Ogaz referred all Board Members.

On a motion by Board Member Knopf, and seconded by Board Member Murdter, Milpitas Oversight Board Resolution No. 9 was adopted by a vote of 6 in favor and 1 opposed (Karlen). Mrs. Karlen stated her view that this would be a waste of City resources, researching and providing readily available public records on the Economic Development Corporation.

Resolution No. 9 is a Resolution of the Oversight Board of the Successor Agency of the Former Milpitas Redevelopment Agency Requesting Records from the Milpitas Economic Development Corporation and Related or Supporting Documents from the City and the City as Successor Agency, Pursuant to the Public Records Act.

**CLOSED SESSION**

The scheduled item was determined to be unnecessary in Closed Session. A brief open discussion was held identifying the remaining issue of the administrative budget and lack of funds to pay for additional expenses, including legal costs. Attorney Miller identified that natural dispute that can arise due to the nature of the Oversight Board and the Successor Agency. She advised that if the Agency failed to act (pay invoices), then the Board could do it and have the power to litigate, if necessary.

Board Member Murdter referred to the state controller's letter which ordered the return of assets of the Economic Development Corporation back to the Successor Agency. He urged counsel to potentially seek a temporary restraining order to cease any further spending by that body.

A motion was made to authorize the law firm of Miller & Owen to negotiate terms of a standstill agreement, to return back to the Board by December 12 with agreed upon terms that that staff would recommend to the Boards to approve, with the City, Successor Agency, Economic Development Corporation and the Oversight Board. Board Member Knopf moved, seconded by Board Member Murdter, and the action noted was approved by unanimous vote of the full Board (7 in favor).

Next Meeting Date

By Board Member consensus, the next meeting was scheduled for Wednesday, December 12 at 4:00 PM at Milpitas City Hall Committee Room. This date was selected, as it was close to the due date of December 15 for the anticipated Due Diligence Review.

**ADJOURNMENT**

Chair Gage adjourned the meeting at 5:51 PM.

*Meeting minutes drafted and submitted by  
Mary Lavelle, Board Secretary*