UNAPPROVED MEETING MINUTES
CITY OF MILPITAS

Minutes of:	**Regular Meeting of Milpitas City Council**
Date:	**Tuesday, November 1, 2005**
Time:	***6:00 PM (Closed Session)***
	7:00 PM (Public Business)
Location:	**Council Chambers, Milpitas City Hall,**
	455 East Calaveras Blvd.

ROLL CALL

Mayor Esteves called the meeting to order at 6:00 PM.

PRESENT: Mayor Esteves, Vice Mayor Gomez Councilmembers Giordano, Livengood and Polanski

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the the following three issues:

(1) CONFERENCE WITH LABOR NEGOTIATORS – COLLECTIVE BARGAINING
(Pursuant to Government Code Section 54957.6)
City Negotiators: Ed Kreisberg, Art Hartinger, Carmen Valdez
Employee Organizations: Police Officers Association (MPOA)
Under Negotiation: Wages, Hours, Benefits, Working Conditions

(2) CONFERENCE WITH REAL PROPERTY NEGOTIATORS
(Pursuant to Government Code Section 54956.8)
Property: 110 Meadowland Dr., Milpitas, California
Agency Negotiators: City of Milpitas (Richard Pio Roda, Steve Mattas). Negotiating Party: Williamson / Wilson. Under negotiation: Terms and Conditions for Disposition of property

(3) CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
(Pursuant to California Government Code Section 54956.9(a))
City of Milpitas v. Turner Construction et al., Santa Clara County Superior Court Case No. 103CV815946 Consolidated with Case No. 103CV008400

The City Council reconvened in Open Session at 7:21 PM with Mayor Esteves presiding and all Councilmembers present.

CLOSED SESSION ANNOUNCEMENT

NONE

PLEDGE

Boy Scouts Troop No. 92 Color Guard led the Pledge of Allegiance.

INVOCATION

A moment of silence was observed.

MINUTES

MOTION: approve minutes of the October 18 City Council meeting, as submitted.

Motion/Second: Vice Mayor Gomez / Councilmember Giordano

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

SCHEDULE OF MEETINGS

MOTION: to approve the Schedule of Meetings, as submitted.

Motion/Second: Vice Mayor Gomez / Councilmember Giordano

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

PRESENTATIONS

Proclamations

Mayor Esteves proclaimed "**Veterans Day** November 11, 2005" for the City of Milpitas. Proclamation was presented to Mr. Lou Horiza, who accepted with great pride on behalf of all veterans in the City. On November 11 at 9:00 AM, at Veterans Park, Milpitas will celebrate this day honoring all veterans. Also, a parade will be held in San Jose later that morning.

Mayor Esteves proclaimed "**Buddy Poppy Promotional Month**" for the month of November 2005, and expressed support for all Veterans of Foreign Wars.

CITIZENS FORUM

Frank DeSmidt, Rotary Club member, announced that the "Texas Hold 'Em" tournament event was canceled, due to a technical application of state law. A follow-up fundraising community event would hopefully be scheduled instead.

ANNOUNCEMENTS

City Manager Charles Lawson announced the upcoming 2005 Charitable Giving Campaign for the City Council and City employees. All were invited to participate in this annual fundraising activity. Terry Medina (586-2703) is the Chairman and city staff contact this year.

Councilmember Giordano attended the School Board meeting recently, so she distributed red ribbons to all Councilmembers in honor of the October 23-29 "Red Ribbon Week" observed to encourage kids to stay off drugs, including support of the City's DARE program. She announced a fundraiser for Milpitas children who need assistance with the Arts: Saturday, December 10, from 4 – 6 PM, at $25 per person. For the Chamber of Commerce, she thanked City Staff Gloria Anaya and Dennis Carrington for their presentation on the new sign ordinance at a recent Board meeting. She stated they had done a tremendous job doing outreach to the business community, including non-profit groups.

Mayor Esteves congratulated the India Community Center for the celebration of its 2nd anniversary of the karaoke club.

ANNOUNCEMENT OF CONFLICT OF INTEREST

None

APPROVAL OF AGENDA

MOTION: to approve the agenda, as submitted

Motion/Second: Councilmember Polanski / Councilmember Livengood

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

CONSENT CALENDAR

MOTION: to approve the Consent Calendar, as submitted

Motion/Second: Councilmember Livengood/Councilmember Giordano

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

*** 6. Adopt Resolution to Elect Coverage Under the Public Employees Medical and Hospital Care Act for the Members of the Milpitas Supervisors Association (MSA)**

Adopted Resolution No. 7559 to elect coverage under the Public Employees Medical and Hospital Care Act for the members of the Milpitas Supervisors Association, effective January 1, 2006.

*** 7. Adopt Resolution To Elect Coverage Under The Public Employees Medical And Hospital Care Act For The Members Of The Milpitas Employees Association (MEA)**

Adopted Resolution No. 7560 to elect coverage under the Public Employees Medical and Hospital Care Act for the members of the Milpitas Employee Association, effective January 1, 2006.

*** 8. Authorize City Manager To Execute Agreement Amendment: Damon S. *Williams Associates (DSWA)*, Project No. 7100**

Authorized the City Manager to execute the agreement amendment with DSWA, in the amount of $39,606, subject to approval as to form by the City Attorney.

*** 9. Approve Contract with CSG Consultants For Fire Inspection Services**

Approved request to contract fire inspection services between the City and CSG Consultants, Inc., in an amount not to exceed $33,600, subject to approval as to form by the City Attorney.

*** 10. Authorize City Manager To Execute Agreement With Finite Matters Ltd. for the PatternStream Budget Publishing System and Implementation Services**

Authorized the City Manager to execute an agreement with Finite Matters Ltd. for PatternStream budgeting publishing system and implementation services, subject as to form by the City Attorney.

*** 11. Approve Agreement With Tax Compliance Services For Transient Occupancy Tax Auditing And Consulting Services**

Approved the agreement with Tax Compliance Services to provide transient occupancy tax auditing and consulting services, subject to approval as to form by the City Attorney.

*** 12. Award the Bid for Painting the Corporation Yard and Fleet Maintenance Buildings**

Awarded the bid and authorized the City Manager to execute a contract with DeMartinez Painting to paint the Corporation Yard and Fleet Maintenance Buildings, for the not to exceed amount of $60,250.00, subject to approval as to form by the City Attorney.

*** 13. Approve Five Payment Request to Vendors / Contractors**

Approved the following five payment requests:

1. $2,807.50 to Saddle Point Systems for the purchase of a Fastback Model 15XS Document Binder and a matching PowisPrinter Spine Printer Model P31.
2. $15,242.36 to John Deere Landscapes for the purchase of one (1) Rainmaster Evolution DX2 irrigation controller 13 and one (1) sub-controller 13-1.
3. $5,758.90 to Ewing Irrigation for the purchase of four (4) backflow prevention device enclosures.
4. $14,099.56 to Synchronex Inc. for the purchase of traffic control components that were replaced due to a lightening strike at the Tasman/Alder, I-880 north bound and south bound off ramps.
5. $5,412.50 to The Active Network for the renewal of the Safari (class registration) software annual maintenance coverage for the periods 10/30/05 through 10/30/06 (a sole source procurement).

PUBLIC HEARING

1. Revisions to the Milpitas Municipal Code, Title X, Chapter 2, Tree and Planting, to Add a Heritage Tree

Principal Planner Dennis Carrington introduced the municipal code revisions, describing the Community Advisory Commission's work on the Heritage Tree Ordinance to date. CAC spent more than two years on this subject, in particular working closely with Public Works Supervisor Carol Randisi. The Community Advisory Commission on October 5

Program, ZT2005-5, Ordinance 201.4

and the Planning Commission on October 12 both recommended that Council approve the program, promoting tree protection and awareness in the City.

Ms. Randisi explained that the ordinance would allow for designating individual trees and to promote their significance to the City. It will become part of the Tree and Planting section of the Municipal Code. "Heritage Tree" designation could be granted based on those which meet any of three findings: 1) outstanding specimen of a desirable species; 2) one of the largest or oldest trees in the city; and 3) tree possesses distinctive form, size, age, location and/or historical significance. Any person may nominate a tree for this designation with the written consent of the owner.

A Heritage Tree inventory will be developed by the Public Works staff, and it will be maintained by the City Clerk.

Councilmember Giordano asked about the age of a tree, and why there were no age specific criteria. Staff replied there was no need (for a minimum age) there, since one tree might be a heritage tree for a reason other than age.

Mayor Esteves asked if a property owner could request removal of a tree from Heritage status? Staff replied yes, removal would require consent of property owner.

The Mayor then opened the public hearing for testimony and none was heard.

(1) Motion: to close the Public Hearing

Motion/Second: Councilmember Polanski / Vice Mayor Gomez

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

Councilmember Polanski felt the most exciting part of the program was the inventory that would be developed, e.g. those trees at Great Mall that were there since the Ford Motor Plant. This would be a benefit to the City, now and into the future.

City Attorney Steve Mattas read Ordinance 201.4 Title: "Ordinance of the City Council of the City of Milpitas Amending Chapter 2 of Title X of the Milpitas Municipal Code "Tree and Planting," To Establish a Heritage Tree Program"

(2) Motion: Waive reading beyond the title of Ordinance No. 201.4

Motion/Second: Councilmember Polanski /Councilmember Livengood

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

(3) Motion: Introduce Ordinance No. 201.4, establishing a Heritage Tree program

Motion/Second: Councilmember Polanski /Councilmember Livengood

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

RA1. CALL TO ORDER

Mayor/Agency Chairman Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 7:50 PM.

RA2. ROLL CALL

PRESENT: Mayor/Chair Esteves, Vice Mayor/Vice Chair Gomez and Agency/ Councilmembers Giordano, Livengood and Polanski

RA3. MINUTES

Motion: to approve the Redevelopment Agency minutes of October 18, 2005, including joint meeting with the City Council, as submitted.

Motion/ Second: Vice Chair/Vice Mayor Gomez / Agency/Councilmember Polanski

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

RA 4. Approval of Agenda and Consent Calendar

Motion: to approve the agenda and consent calendar

Motion/Second: Agency/Councilmember / Agency/Councilmember

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

RA 5. Receive Progress Report on Library, and Midtown East Parking Garage, and Approve the Design Development Phase for the Library, Project No's. 8161 & 8162

Project Manager Mark Rogge discussed the progress of the Library project. Project schedule was maintained about one month ahead of schedule. The $39 million spending plan was moving right along, per the displayed information he provided to the Council. He reviewed spending line items, as on target, for the library including the Total Fixed Furniture and Equipment of $3.8 million, with a 6% contingency as planned.

Consultant Mr. David Schnee, principal of Group 4 Architecture, stated that he and staff had moved toward the actual specific design, the predecessor to the construction document phase, and then on into actual construction. He displayed a moving computer animation of the proposed library and its surroundings.

(1) Motion: approve 100% Design development phase

Motion/ Second: Vice Chair/Vice Mayor Gomez / Agency/Councilmember Polanski

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

Mr. Rogge then reviewed the east parking garage and gave a visual presentation showing the top floor. He displayed the angle of cars that would be viewed from the top section.

Councilmember Livengood brought out the issue of closure of any streets when the construction occurs. There was a request from the Subcommittee to the staff not to close any street, and to avoid detours, with a very particular concern for the businesses on Main St.

Mayor Esteves also asked staff about the traffic impact on Calaveras Blvd and other surrounding streets during construction. The staff agreed to take these points into consideration as construction approached.

Mayor Esteves inquired about the clean-up schedule during construction. Mr. Rogge explained the delay in acquisition of property (due to one tenant) caused a delay with the required clean-up and that issue would be brought back to the Subcommittee.

(2) Motion: note receipt and file staff report on the design of the library and Midtown East parking garage

Motion/ Second: Chair/Mayor Esteves / Agency/Councilmember Polanski

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

RA 6. Acceptance of the City's Comprehensive Annual Financial Report, Component Unit Financial Statements, and Other Related Annual Audited Reports For The Fiscal Year Ended June 30, 2005

Finance Director Emma Karlen provided the overview of the Comprehensive Annual Financial Report and other documents presented. She explained that Terrace Gardens was included as a stand-alone component unit (in the CAFR) even though it is now a non-profit entity, since the City does have control of operating budget and the Board of Directors. Due to its by-laws, Terrace Gardens must be included here in reporting.

Statements were prepared in conformity with general accepted accounting principles, per the auditors' unqualified opinion. Slides were reviewed similar to information that was previously presented on September 20.

The Finance Director stated that General Fund expenditures were $3.3 million under budget. The 15% Reserve level in last five years has been met. And, Redevelopment revenues were reduced $3.26 million (high tech down, Agency had to give the state $3 million for ERAF).

Vice Mayor Gomez inquired about Motor Vehicle license fees. The Finance Director explained the state had paid the City in a one-time reimbursement of $3.26 million (of property tax), due to the state permanently reducing vehicle license fees several years ago.

RDA Fund balances totaled $158.3 million, which include $16.9 in reserves, $20.9 designated for housing expenditures, $92.5 for non-housing and $28 million for non-housing unreserved funds.

Councilmember Giordano asked if there were any anticipated changes in next quarter? Ms. Karlen replied yes, and it would be detailed in the next agenda item.

Motion: note receipt and file of CAFR and other audit reports

Motion/Second: Vice Mayor/Vice Chair Gomez/ Agency/Councilmember Giordano

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

RA 7. City of Milpitas Financial Status Report for Three Months Ended September 30, 2005

Finance Director Emma Karlen provided an overview of the General Fund for the first three months of the current fiscal year. Approximately 17% of budgeted revenues had been received already, which was more than last year at this time.

Sales Tax revenue increased (compared to last year first quarter) due to general retail, restaurant and some business-to-business segment increases. A large increase in revenue was noted recently in building permit applications (from large developers such as KB Homes), but she noted that such developments are cyclical. Motor vehicle license fees increased, seemingly large from the repayment by the state in one lump sum of $1.1 million (due to cities by the state). Transient Occupancy (hotel) Tax showed a slight increase of 9% in the last quarter.

Regarding expenditures, she pointed out that some departments have exceeded 25% of allotted budget in the first quarter and that was due in most cases to fees that must be paid at the beginning of the year. Examples of these items were software licenses, insurance premiums, and Chamber of Commerce contribution.

Councilmember Livengood asked, in looking at specific departments, 25% had been spent over the year's budget. Why was that? Staff replied that in the City Council budget was the payment to the Chamber of Commerce. For Recreation Department, expense reflects summer activity in July, August. For Information Services, computer software licensing due at the beginning of year. In Human Resources, payment of workers' compensation was due at beginning of the year.

Motion: note receipt and file of status report

Motion/Second: Vice Mayor/Vice Chair Gomez/ Agency/Councilmember Giordano

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

*** RA 8. Approve Budget Appropriation; N. Main Street Utility Improvements, Project No. 8153**

Approved Budget Appropriations as follows:
$400,000 from the Storm Drain Fund ,
$350,000 from the Water Fund ,
$105,000 from developer reimbursements, and
$100,000 from the 2003 RDA Tax Allocation Bonds for N. Main Street utility improvements.

*** RA 9. Award Construction Contract: Police Evidence Freezer Project No. 8159, All Temp Engineering, Inc.**

Awarded the construction contract for the Police Evidence Freezer, Project No. 8159, to All Temp Engineering, Inc. in the amount of $94,800.

*** RA 10. Approve a Contract Change Order for Mechanical Shades and Support System, Project No. 8135**

A modification to the westerly mechanical shade system was needed to install the shade. A contract change order for this shade modification, in the amount of $8,000, was necessary.

Approved Contract Change Order for mechanical shade system modification.

*** RA 11. Adopt Resolution *Granting Initial Acceptance:* 2005 ADA Sidewalk Ramps, Project No. 4226 and Building Improvements, Project No. 8135**

Adopted RDA Resolution No. RA 244 granting initial acceptance of the project subject to the one-year warranty period and reduction of the faithful performance bond to $8,462.

*** RA 12. Adopt Resolution Granting Initial Acceptance: *Utility Relocation Project* Weller Lane and Winsor Street, Phase I, Project 8153**

Adopted RDA Resolution No. RA 245 granting initial acceptance of the project subject to the one-year warranty period and reduction of the faithful performance bond to $66,847.86.

*** RA13. City of Milpitas Investment Portfolio Status Report for the Quarter Ended September 30, 2005**

Noted receipt and filed the investment report for the quarter ended September 30, 2005.

RA 14. ADJOURNMENT

Chair/Mayor Esteves adjourned the Redevelopment Agency meeting at 8:22 PM.

REPORTS OF OFFICERS, COMMISSIONS, AND COMMITTEES

2. Mayor's Appointments to the Council Open Government Subcommittee

Mayor Esteves recommended Councilmembers Polanski and Livengood to serve on the Subcommittee.

Vice Mayor Gomez requested that the Mayor recommend the author of the Open Government Ordinance and another member who supported the ordinance.

Councilmember Polanski believed that any Council member might make recommendations for amendments to the ordinance, at any time. She thought that, for residents, there should be a balance on the subcommittee. She had not voted in favor on the original ordinance, but that was due to some specific elements in it, and in general she supported open governance.

Councilmember Livengood would support a motion that included the author of the Open Government ordinance to serve on the Subcommittee and a second person who endorsed and voted for the original ordinance. Otherwise, he would vote no.

(1) Motion: move to appoint Councilmembers Polanski and Livengood to the Open Government Subcommittee

Motion/Second: Mayor Esteves/ Councilmember Polanski

Motion failed by a vote of: AYES: 2 (Esteves, Polanski)
NOES: 3 (Giordano, Gomez, Livengood)

Councilmember Livengood spoke about the need to get the Subcommittee appointed so it can get on with the work of the Open Government ordinance, as intended when it was adopted earlier this year.

Mayor Esteves wanted to strike a balance, trying his best to have more senior members of the Council on the subcommittee. He said he took his role seriously, and took best consideration into account when making the appointment recommendations.

Councilmember Livengood responded, stating if this issue was not resolved at the next meeting, then at the first meeting in December he wanted that responsibility to fall to the Vice Mayor (called for under his – Livengood's - name on that meeting agenda). This would be separate from the Mayor's agenda item on appointment.

3. Mayor's Request To Review Letter From San Jose Mayor Regarding Hurricane Katrina Response

Mayor Esteves wanted the City Council to have full information. He requested a review by the City Council and to have an official response.

Vice Mayor Gomez expressed that the City of Milpitas can inform Mayor Gonzales about the many actions taken by the City of Milpitas in response to the Gulf Coast disaster.

Mayor Esteves indicated Milpitas should send a letter to San Jose, with inclusion of the many actions taken by Milpitas, regarding the Hurricane and its aftermath.

Councilmember Livengood had solicited some businesses to respond. He mentioned the City employees' union Protech that donated $2500 to Katrina relief, and these could be included in the letter to San Jose. He also wants these businesses recognized in December at City Council meeting.

4. Request by Councilmember Polanski for the City Council to Waive the Attorney-Client Privilege for City Attorney Memorandum Related to Proposed Liberty Property Development

Councilmember Polanski spoke about the October 12, 2005 memo she received from the City Attorney that was attorney-client privileged. She explained that it was information only, and she would like it made public.

Motion/Second: Vice Mayor Gomez / Councilmember Livengood

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

5. Review, Consider, and Provide Staff Direction on "No Smoking" in Parks Signage and Possible Ordinance

Recreation Manager Bonnie Greiner introduced the subject that the Parks, Recreation and Cultural Resources Commission had reviewed. There already was state law that bans Smoking in City Parks, as per the California Health and Safety Code referenced.

Councilmember Livengood asked about the current law in place now, with regard to playgrounds specifically. Does that include Little League play at ball fields? It was his recollection that presently, smoking was acceptable in the stands during games. Ms. Greiner responded that the PRCRC would like the ban to cover sports fields.

Vice Mayor Gomez inquired about what kind of complaints was City getting? Mr. Dennis Cuciz replied none. Was it a littering issue or a problem for staff at all? Mr. Cuciz replied no. Vice Mayor Gomez stated his worry that this concept was great, but he did not want to generate phone calls for enforcement, possibly to involve police.

Councilmember Polanski asked about the cost of signs. Mr. Cuciz replied that 25 city parks would be impacted, and it simply would involve adding on to the existing "Rules of the Park" signs at about $1500 total.

Councilmember Giordano contacted Steve Munzel, Chair of the PRCRC, who said there was a litter problem with cigarette butts. She supported the signs being edited and would vote favorably on a motion tonight.

Speakers:
Mr. E. Lamont Jones, of the American Lung Association, supported smoke free parks, especially for the kids, with concern for asthma and second hand smoke. Also teenagers, when they saw adults smoking, it does encourage them to smoke. The signs and/or restrictions in public parks could cut down on that. He asked that the Council reduce the chance of fire being sparked also.

Motion: move that the "No Smoking" signs be edited with the reference to state law, and request staff to review a possible new ordinance with all the issues surrounding enforcement, including prohibition of smoking at ball parks and bleachers.

Motion/ Second: Councilmember Polanski / Councilmember Livengood

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

NEW BUSINESS NONE

ORDINANCE NONE

RESOLUTIONS Items were adopted on the Consent Calendar.

BIDS AND CONTRACTS Items were adopted on the Consent Calendar.

CLAIMS AND DEMANDS Item was adopted on the Consent Calendar.

ADJOURNMENT Mayor Esteves adjourned the meeting at 8:52 PM.

Meeting minutes respectfully submitted by:

_____

Mary Lavelle, City Clerk