

**MEETING MINUTES  
CITY OF MILPITAS**

**Minutes of:** Regular Meeting of Milpitas City Council  
**Date:** Tuesday, March 5, 2013  
**Time:** 6:00 PM  
**Location:** Council Chambers, Milpitas City Hall,  
455 East Calaveras Blvd., Milpitas

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**ROLL CALL**

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

**PRESENT:** Mayor Esteves, Vice Mayor Polanski, Councilmembers Giordano and Montano

**ABSENT:** Councilmember Gomez was absent at roll call, and for the first part of the meeting. He arrived in Council Chambers at 8:49 PM.

**CLOSED SESSION**

City Council convened in Closed Session to discuss labor negotiations and one litigation matter.

City Council then convened in Open Session at 7:00 PM.

**ANNOUNCEMENT**

No announcement out of Closed Session.

**PLEDGE**

Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

**INVOCATION**

Councilmember Montano offered a prayer to start the meeting.

**MINUTES**

Motion: to approve meeting minutes of February 19, 2013 City Council meeting, as submitted

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of:

AYES: 4

NOES: 0

ABSENT: 1 (Gomez)

**SCHEDULE OF MEETINGS**

Motion: to approve Council Calendars/Schedule of Meetings for March 2013, as amended

City Manager Tom Williams stated three changes to the March calendar: Milpitas Planning Commission meeting is cancelled on March 13, while a special meeting will be held on March 20. The San Jose/Santa Clara Treatment Plant Advisory Committee (TPAC) meeting was moved from March 14 to Monday, March 25 at 1:30 p.m. Mayor Esteves said the SVRT (re: BART) meeting was changed from March 21 to March 4 at 10:00 AM. Also, Santa Clara Valley Transportation Authority Board's Admin. and Finance Committee was scheduled for March 21 at 12:00.

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of:

AYES: 4

NOES: 0

ABSENT: 1 (Gomez)

**PRESENTATION**

Victoria Bordon, director of Santa Clara County's Menthol & Flavored Tobacco Prevention Project, came to thank Milpitas City Council for its public stance against promotion of tobacco use by Milpitas residents, especially youth, and for adopting a resolution to stop marketing of flavored tobacco products to youth and other related health and justice issues. She presented a thank you certificate to Mayor Esteves from the project.

**PUBLIC FORUM**

Maureen Jones of San Jose addressed the City Council about fluoride in the water and about her concerns for the quality of drinking water with fluoridation.

Robert Marini, Milpitas resident, addressed the City Council on sewer rate calculations.

Rob Means, Milpitas resident, addressed the City Council on global warming.

A man who was a 7- year resident spoke to the Council about a stress-free living campaign sponsored by the Art of Living. He urged all to view the website stressfreeviolencefree.org.

**ANNOUNCEMENTS**

Councilmember Giordano read aloud a letter from Terrace Gardens senior apartments, expressing how valuable the Community Development Block Grant program funds awarded to them in 2012 were and those were applied toward improvements at the property.

Vice Mayor Polanski thanked many of those involved in the wonderful tribute and celebration of the City’s first African American Mayor Ben Gross, held in February at the Senior Center.

Mayor Esteves invited all to attend the opening of the new Alviso Adobe Park, scheduled on Saturday, March 16 at 10:00 AM.

**ANNOUNCEMENT OF CONFLICT OF INTEREST**

None.

**APPROVAL OF AGENDA**

Motion: to approve the agenda, as amended

City Manager Williams made the request to continue agenda item no. 1, Public Hearing on a flag ceremony request. Applicant requested to return later in the year with a specific program date.

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

**CONSENT CALENDAR**

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

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

- \* 2. Odor Report Received the February 2013 odor report.
- \* 6. CAC Appointment Newly appointed Jacqueline Holland to the Community Advisory Commission as Alternate No. 4 to a term that will expire in January 2014.
- \* 7. Amend BPAC By-laws Authorized and approved an amendment to the Bicycle Pedestrian Advisory Commission By-Laws to change meeting dates as recommended by BPAC Commissioners, in order to add flexibility in which the Commission meets every two months on undesignated days (agreed upon by current Commissioners).
- \* 8. 2013 COPS Grant Accepted the 2013 Citizen Options for Public Safety (COPS) grant in the amount of \$107,684, and approved a budget appropriation in the amount of \$107,684 to the Police Department’s operating budget.
- \*10. Resolution for Water Supply Agreement Amendment Adopted Resolution No. 8235 approving Amendment No. 1 to the Water Supply Agreement with the City and County of San Francisco.

- \*11. San Jose Bike Party Grant Authorized the Police Chief to execute the service agreement with the County of Santa Clara Public Health Department for the 2013 San Jose Bike Party grant program, and approved a budget appropriation in the amount of \$6,072.26 to the Police Department overtime budget, per 2013 San Jose Bike Party grant.
- \*12. Agreement with DR Horton Authorized the City Manager to execute an agreement with DR Horton for Fee Credit Reimbursement in the amount of \$7,316,605 for the Transit Area Specific Plan Public Facilities and Improvements.

**PUBLIC HEARING**

1. Request for Flag Ceremony for Black History Month: this item was continued to a date uncertain.

**UNFINISHED BUSINESS**

One item was approved on consent calendar.

**REPORTS**

Two items were approved on consent calendar.

3. Proposed Resolution

Mayor Esteves introduced this issue, which was a request he had received from the Vietnamese American community in northern California, including Milpitas, for adoption of a resolution regarding visits to the City from any officials from Vietnam. The Mayor introduced City staff member Ms. Lechi Nguyen from the Barbara Lee Senior Center, who was at the podium to translate remarks between the Vietnamese and English languages for the benefit of audience members.

Vice Mayor Polanski asked the City Attorney if he had reviewed the resolution and if it was legal. Mr. Ogaz responded yes it was. The Vice Mayor was fully supportive of the draft Resolution, as recommended by the Mayor. Councilwomen Montano and Giordano also expressed their support.

The Mayor next invited speakers from the audience.

Dave Cortese, Santa Clara County Supervisor, stated his strong support for the democratic movement of the people of the Vietnamese American immigrant community.

Ro Khanna, spoke in support of those who sought adoption of the resolution.

Johnny, thanked the Council for the support of City officials for this important issue.

Tam Nguyen, San Jose resident, citizens are lucky to be in Milpitas with such leaders.

A woman was very grateful for approval of the Resolution this evening.

Van Lan Truong, Milpitas Commissioner, thanked the City Council for its leadership.

Chan Nguyen, president of a Vietnamese residents organization, spoke in Vietnamese language, then translated by staff.

A Vietnamese man, was very grateful to Council. He cannot accept cruel treatment by the government towards its people in Vietnam.

Vivian Huyen, Milpitas resident, was a young lady who said she represented her friends, and wanted democracy in her family's homeland.

Van Le, Milpitas school board member, celebrated the place she calls home. She was glad the Council would approve the resolution.

Mr. Nguyen, attorney, was the son of Vietnamese immigrants and he spoke of their struggle to be here in America, where they support democracy.



Vice Mayor Polanski agreed with the application and considering these at budget time. She sought clarification on the 60% benefiting in City and the need to have a branch in the City. She recommended that groups could receive a waiver or donation only once per year, not up to four. She asked the City Attorney about religious organizations. Mr. Ogaz commented on benefit to the community which must be determined. The Vice Mayor also suggested having a maximum number of years in a row that groups could ask for money or fee waivers.

Councilmember Montano inquired if an id number would be necessary, in support of the application, in order to prove the non-profit status. In the past, individuals asked for grants, even though it was not a public benefit. She agreed that child care grants would not be appropriate. She asked for a list of who had requested and received donations in the past, and the City Manager displayed a list overhead for the last two fiscal years.

Mayor Esteves asked staff to define if an event by a church provided a public benefit or not, after he inquired about recent past fee waivers for church organizations.

Councilmember Gomez arrived at the meeting at 8:49 PM.

Councilmember Montano noted there were different types of non-profit organizations, like non-profit or not-for-profit. Schools were considered non-profit. How to get the word out to groups that were not aware of the funds available would be important.

Vice Mayor Polanski identified the elements of the policy she supported: the 60% beneficiary in Milpitas, one time per year to receive a donation or fee waiver, the need to define non-profit clearly and to provide a public benefit. She also sought groups not being eligible to receive these year after year, and perhaps some type of reporting requirement. Mayor Esteves added that he wanted to freeze the granting of any requests until a policy was finalized.

City Manager Williams asked if Council wanted to adopt a policy or an ordinance. Mr. Williams expressed that with an adopted ordinance, requirements would be very clear, for those inquiring to know the rules to abide by.

Councilmember Gomez thanked members of the former Finance Subcommittee for bringing up this topic. He would like a policy and to see how it works, before passing a formal ordinance.

Vice Mayor Polanski suggested bringing it back as policy with definitions, allowing for an opportunity to see if there were any bugs in policy to work out or to adjust. That would be easier to do with a policy rather than a more formal ordinance.

Mayor Esteves wondered if they should determine a specific budget for these items. Ms. Karlen reported that \$6000 - \$8000 was budgeted in the City Council's Unallocated Community Promotions line item in recent budgets.

Motion: to receive the staff report from the Finance Director and to direct staff to prepare the final version of a new policy on fee waivers and donations to non-profit organizations, with proper wording including suggestions provided during the discussion, and then after adopting the policy, to bring it back after six months to consider it in ordinance format, and the motion included a freeze on all current requests

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

5. Three Council Appointments Mayor Esteves asked for volunteers from the Council for two appointments, and he recommended Vice Mayor Polanski as his alternate for the Cities Association.

Motion: to make the following appointments

- 1) Mayor Jose Esteves as the Alternate Member on the Santa Clara County Library Joint Powers Authority Board of Directors.
- 2) Vice Mayor Althea Polanski as the Alternate to Mayor Jose Esteves on the Cities Association of Santa Clara County, both the Board and on the Cities Selection Committee.
- 3) Mayor Jose Esteves as alternate to the General Assembly of the Association of Bay Area Governments. No Councilmember was appointed as the delegate/member.

Motion: Vice Mayor Polanski/Councilmember Giordano

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

## **NEW BUSINESS**

One item was approved on consent calendar.

## **ORDINANCE**

### 9. Ordinance No. 284

City Attorney Mike Ogaz explained a proposed ordinance for a new requirement of the Council to disclose contributions of \$100 or more from a developer or an employee of one, prior to any vote at a Council meeting when a vote on a project was on the agenda.

Councilmember Giordano had no objection noting there was already a public reporting on campaign committee report Form 460 to the City Clerk. She predicted possible challenges to having all information needed to report at a City Council meeting, when the reports were only prepared and reported every six months.

Mr. Ogaz offered that the ordinance could be edited to report donations only “since the last report filed.”

Mayor Esteves expressed his goal with this proposed ordinance was bringing further awareness to the public.

Vice Mayor Polanski felt that contractors should also be included along with developers, giving the examples of Rural Metro or Allied Waste, which might give campaign contributions prior to contract renewals or amendments.

Councilmember Gomez felt it was good to make this information more accessible and he agreed with that idea. He was not sure why it needed to go into an ordinance and noted some problems with some findings in the ordinance. He asked City Attorney if he could strike out the third “whereas” statement in the draft ordinance.

Councilmember Giordano inquired “what is the punishment?” in terms of enforcement of the ordinance. Mr. Ogaz replied there were no enforcement provisions as drafted.

Vice Mayor Polanski wanted to go forward with the ordinance, and asked that it be amended to delete the second “Whereas,” to add contractors and move forward to return to Council for adoption. Councilmember Giordano seconded the Vice Mayor’s statement, if it was a motion.

Mayor Esteves inquired about reporting contributions by spouses and the City Attorney responded that could be difficult to include or report.

Councilmember Giordano inquired about Councilmembers running for another election race (non-Milpitas) and whether contributions to such a campaign would have to be disclosed. The City Attorney responded that was not distinguishable, in the ordinance as written.

