UNAPPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council
Date of Meeting:	February 15, 2005
Time of Meeting:	6:30 p.m. (Closed Session 7:00 p.m. (Public Business)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the adjourned meeting of the Milpitas City Council at 6:30 p.m. Present were Mayor Esteves, Vice Mayor Gomez, and Councilmembers Giordano (arrived 6:32 p.m.), Livengood, and Polanski.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following item listed on the agenda:

Conference with Labor Negotiator
(Pursuant to Government Code Section 54957.6)
Agency designated representative: Charles Lawson and Cherie Rosenquist
Employee Organizations: ProTech, MEA, MSA, LIUNA, MPOA, IAFF and unrepresented employees

Mayor Esteves adjourned the meeting to closed session at 6:31 p.m.

The City Council meeting reconvened at 7:07 p.m. with Mayor Esteves presiding and Vice Mayor Gomez and Councilmembers Giordano, Livengood, and Polanski present.

CLOSED SESSION ANNOUNCEMENTS

There were no Closed Session announcements.

PLEDGE

Members of Troop No. 92 led the Council and audience in the Pledge of Allegiance.

MINUTES

MOTION to approve the City Council minutes of January 11, 2005, and February 1, 2005, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Gomez, Giordano. Ayes: 5

SCHEDULE

Interim City Manager Charlie Lawson announced there would be a Council CIP Subcommittee meeting on February 22, 2005, at 7:15 p.m. in the City Hall Fourth Floor Conference Room, which would be open to the public.

MOTION to approve the Schedule of Meetings as amended.

M/S: Gomez, Giordano. Ayes: 5

PRESENTATIONS

Mayor Esteves read a proclamation declaring February 2005 as "Silicon Valley Reads Month" and presented it to County Librarian Melinda Cervantes. Ms. Cervantes stated Silicon Valley Reads was a very special program in Santa Clara County; it only came around once a year and, therefore, it was important to get the word out about all the activities. Ms. Cervantes said there were over 30 programs being offered at Libraries and Senior and Community Centers throughout the month of February; the last event was as late as Saturday, February 26, 2005, at 4:00 p.m. and would be held at the Milpitas Library and entitled "Memoir Sharing"; Milpitas High School students who attended a creative writing workshop would be reading their memoirs.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks be limited to two minutes or less.

Rob Means spoke about oil becoming less available; read from a newspaper article regarding some of the problems the public would be facing; quoted from an article predicting a crisis within probably the next five to seven years of a proportion that none of us suspected could possibly happen; and suggested when thinking about buying cars, get some fuel efficient ones.

Doreen Garcia Nevel said as an individual and a concerned Native American citizen, she was requesting that the Mayor and City Council understand that they were aware of the findings of human remains on the Elmwood site; about 10 years this same site yielded human remains of brothers and sisters of the Ohlone tribe; the site was a known prehistoric archeological site of Native Americans; she was concerned that there were plans to develop the area and was calling for the City of Milpitas to conduct a more thorough investigation and/or research to assure that the site had no more remaining prehistoric Native Americans in the burial site, which would ensure that all human remains had been found and properly moved to another site for proper burial; she requested that this report be written and published for public review in the Milpitas Post; in the past when remains had been found, the information had not been made available to communities by the City; and, in general, there was a lot of mistrust between the City and the Native American population; acting on behalf of all Native peoples, she was putting the City of Milpitas on notice on this date, February 15, 2005, that if any more remains were found after the fact, the City would be held responsible and it would end up in Federal Court. Ms. Nevel further stated that she hoped the matter would be resolved appropriately with human understanding of the sacredness of their past dead family members who lay in peace and not disturbed by the need to develop the lands in the name of progress; if progress must come to native lands, the native citizens did not want it on top of its cemeteries; and requested they be given a chance to move their dead and give proper burial.

Councilmember Livengood commented that when Elmwood was expanded (maybe 15-16 years ago), he thought there had been a report then and asked staff to see if they could find that report. Councilmember Livengood said he thought the City of Milpitas or the County may have done the report.

Ms. Nevel said she understood that the City was aware that this site was an archeological prehistoric site, yet the City wanted to go ahead and do the KB project on the site; she reiterated that if any other remains were found on the site, there would be a lot of trouble.

Councilmember Livengood explained that he was not trying to be argumentative but was saying he thought there was information that may have already been produced and was asking staff to look into either the City's files or the County's files and to give a copy to Ms. Nevel.

Ms. Nevel said she was saying that they would like to be assured there were no more remains and would like the City to do more investigation/more research to find out if there were any more; if there were any more remains on the site, if there were another incident where human remains were found, there would be a lot of trouble.

A man, who said he was a Milpitas resident representing the International Association for Human Values, an Art of Living Foundation, invited everyone to participate in a walk for Tsunami victims that would be held on Sunday, February 20, 2005, beginning at Milpitas City Hall at 3:00 p.m. with all the proceeds going to the Tsunami Relief Fund.

Mayor Esteves said this was an opportunity for everybody to help in the Tsunami disaster, the walk would start at City Hall at 3:00 p.m. on Sunday, February 20, 2005, and would help the Tsunami victims.

Ernestina Garcia, addressing Councilmember Livengood, inquired if she could get a copy of what he was talking about. Councilmember Livengood said he was going to have staff try to find it; he thought that when Elmwood expanded, that issue was dealt with, but he did not remember what the report said or exactly when it was done; he hoped staff could find it in the City's files or the County's files. Ms. Garcia said they would be meeting with the Tribal

Council and it would be important to have a copy and asked that the Council give consideration to this request.

ANNOUNCEMENTS

Councilmember Polanski, referring to an article that was in the February 15, 2005, San Jose Mercury News, congratulated the Milpitas Unified School District for Rancho Middle School's earning the California League of Middle Schools "Distinction for Excellence." Councilmember Polanski said Rancho was one of four schools throughout the state receiving this award and would be recognized March 18-20.

Councilmember Giordano said when she was serving on the Planning Commission, she had requested the City's Housing Element be reviewed and updated in terms of whether the City was meeting its housing affordability and she would like a report back on it. Councilmember Giordano also said tonight was her parent's 60th wedding anniversary and wished them a Happy Anniversary.

Vice Mayor Gomez, referring to the flag currently being at half-staff, explained it was due to Captain Mark McCormack of the Santa Clara County Fire Department, who died recently in the line of duty; he was the first firefighter in the Department's 58 year history to die in the line of duty; extended condolences to Captain McCormack's wife and his extended family, along with all his colleagues; and requested that the Council meeting be adjourned in honor of Captain Mark McCormack.

Mayor Esteves said he had requested the flag be lowered to half-mass to give tribute, honor, and recognition to Captain McCormick and offered condolences to his family.

Mayor Esteves thanked the various Chinese and Vietnamese clubs/organizations for their recent New Year celebrations; thanked the Sunnyhills Association for sponsoring the breakfast, stating this month Black History Month was featured; recognized the contribution of the African/American residents; congratulated all the schools that played in the MUSD band concert performance; and congratulated Club Scout Pack 92 on the celebration of its 10th anniversary.

ANNOUNCEMENT OF CONFLICT OF INTEREST

City Attorney Mattas inquired if any member of the City Council had a Conflict of Interest to disclose it for the record. There were none.

MOMENTS OF REFLECTION

Mayor Esteves stated this was to do with the City's Ethics Program and inquired if there were any comments from the Council. There were none.

AGENDA

MOTION to approve the agenda, including the supplemental agenda item 9A, as submitted.

M/S: Giordano, Gomez. Ayes: 5

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar.

Rob Means in the audience requested item 5 be removed; Kim Singh in the audience requested item 23 be removed.

Councilmember Polanski requested item 12 be removed.

Mayor Esteves requested item 2 be added to the Consent Calendar.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as amended by the addition of item 2 and the removal of items 5, 12, and 23, in accordance with the staff recommendations.

M/S: Livengood, Polanski. Ayes: 5

*2. Tsunami Fund	Approved the Mayor's recommendations to endorse the "Bay Area Unites -- Tsunami Fund" event on Sunday, February 20, 2005, and provided a contribution of $300.00 from the Council's Community Promotions budget.
*13. Child Abuse Prevention	Approved budget transfer of $3,100.00 from holding account HA 1377-2500 to 100-163-4221 to purchase Child Abuse Prevention Magnets and Lapel Pins.
*14. Sports Center Gym Improvements (Project No. 8160)	Adopted Resolution No. 7503 granting approval to submit a grant application to the Federal Emergency Management Agency (FEMA) for the 2005 Pre-Disaster Mitigation Grant Program: Sports Center gym Improvements (Project No. 8160).
*15. 2005 Pre-Disaster Mitigation Grant Program (Project No. 7098)	Adopted Resolution No. 7504 granting approval to submit a grant application to the Federal Emergency Management Agency for the 2005 Pre-Disaster Mitigation Grant Program and adopted a Resolution of Local Support for the South Milpitas Water Line Improvements (South Milpitas Water Line Replacement [Project No. 7098] and Water System Seismic Improvements [Project No. 7100]).
*16. Interim Senior Center (Project No. 8151)	Adopted Resolution No. 7505 granting initial acceptance of the project subject to the one-year warranty period and reduction of the faithful performance bond to $20,224.712.
*17. Main Fire Station Replacement (Project No. 8089)	Adopted Resolution No. 7506 granting final acceptance and releasing the bond.
*18. 2005 Street Resurfacing (Project No. 4223)	1. Approved plans and specifications. 2. Authorized advertising for bid proposals.
*19. CalRecovery, Inc.	Authorized the Interim City Manager to execute agreement amendment No. 2 with Cal Recovery, Inc. for odor control advisory services for $17,700 bringing the not-to-exceed amount to $52,200, subject to approval as to form by the City Attorney.
*20. Coyote Creek Trail, Reach 1 (Project No. 4206)	1. Approved a grant augmentation of $51,000 from Association of Bay Area Governments and approved appropriation of this grant funding to the project budget; 2. Approved the Acting Assistant City Engineer to execute a contract change order with GradeTech, Inc. adding Bid Alternate No. 1B to the construction contract at a cost of $57,000;
*21. Abel/Calaveras Right Turn Lane (Project No. 4186)	1. Authorized the Acting Assistant City Engineer to execute amendment to authorization letter with Pacific Gas & Electric Company in the amount of $14,335, subject to approval as to form by the City Attorney. 2. Approved agreement amendment with Korve Engineering in the amount of $39,065.00, subject to approval as form by the City Attorney. 3. Approved budget appropriation in the amount of $497,538, from the KB Infrastructure fund.
*22. HMH Engineers (Project No. 4225)	Authorized the Interim City Manager to execute the agreement amendment with HMH Engineers, in the amount of $146,460, subject to approval as to form by the City Attorney for South Park Victoria Drive Pavement Rehabilitation (Project No. 4225).
*24. Miscellaneous Vendors	Approved the following purchase requests: 1. $13,175.00 to Nazak Construction for emergency Fire Station Deck Repair. The deck that is directly over the O.E.S. office has been leaking for several years. A few months ago a

leak test was conducted to determine if in fact the leaks were from the deck or elsewhere. The test confirmed the leaks were from the deck. The deck repair was included in the settlement agreement on the Main Fire Station, as this has been a deficient item since it was constructed in 2000. The work was performed as an emergency under section I-2-5.04 of the Municipal Code "Emergency Authority of Purchasing Agent" due to the multiple heavy leaks caused by the current rainy weather (Funds are available from Project No. CP8135 Miscellaneous Building Improvements for these services.)

2. $12,563.58 to FJM Bering Truck Center for emergency repairs to Fire Engine-3 #41. Engine-3 #41 is a 1994 Pierce Fire Engine with 4 wheel disk air brakes. About a month age the brakes started smoking slightly so the unit was brought in for an inspection. It was discovered that the transmission retarder, a key safety component that enables the unit to brake against its own engine, thereby greatly increasing the unit's ability to stop quickly and also significantly reducing wear on the disk brakes, had failed internally. Engine-3 #41 is a frontline engine used almost everyday and essential to the effective operation of Station No. 3. While the retarder was out it was also discovered that the step supports had cracked again. Past attempts to repair them in the fire station had failed because complete access to the step support base could not be gained with the retarder in the way. Therefore, although not an emergency, repair to the step supports was performed at the same time. Both repairs were performed under section I-2-5.04 of the Municipal Code "Emergency Authority of Purchasing Agent". (Funds are available from the Fleet Maintenance budget for these repairs.)

PUBLIC HEARINGS (None)

REPORTS

1. Commission Appointments

Mayor Esteves said he had announced a couple of meetings ago that he would be recommending appointments to fill commission vacancies and had set a deadline for reviewing applications for appointment; based on that, he had provided a list of volunteers he would like to serve on City commissions, and there was also a list of reappointments and moving alternates to regular positions.

Councilmember Giordano said she had asked two or three Council meetings ago to have a report from staff expressing ideas to expand the outreach, she hadn't see that yet; she would like to see that done as an agenda item for the next meeting. Councilmember Giordano further stated she had been monitoring the City's web site and hadn't seen any posting of the available Commission appointments. Councilmember Giordano said she counted 132 positions on Commissions, the Mayor was recommending 32 of those positions, or 25 percent, and expressed concern that there hadn't been any extended outreach.

Mayor Esteves said there were 32 but only 14 were new appointments; all the rest were reappointments and movements.

Vice Mayor Gomez said there was an item later on the agenda associated with this (item 7) authorizing the Subcommittee on Appointments to make recommendations to Council, and he would be requesting that this item be deferred one Council meeting, depending on what action is taken on item 7.

Councilmember Polanski said the Mayor's ability to make appointments of commissioners was discussed before and State Law (Government Code Section 40601-40605) authorized in General Law cities, where the office of Mayor is an elective office, the Mayor to make all appointments to boards, commissions, ad committees unless otherwise specifically provided by Statute. Councilmember Polanski further stated as she had previously stated, she believed the Council's action on December 21, 2004, did not include that the Subcommittee would make the appointments of commissioners; even though she knew that was being put forth in item 7 as part of the Council Handbook, she believed that the Government Code she cited

allows the Mayor to make those appointments; and if there were any appointments the Councilmembers wished to be removed, they should request to do it at this time.

Councilmember Livengood said he thought it was important to resolve item 7 before making as many as 32 appointments to these commissions; he thought the City Council, just as it had the right to appoint Planning Commissioners by a majority vote, also had the right, if it chooses, to appoint the commissioners by a majority vote. Councilmember Livengood further stated he thought the statute Mrs. Polanski referred to specifically said the Mayor does have that right unless there was another statute on the books in the City that said something different; he was not going to vote to approve all these until he had a chance to deal with item 7. Councilmember Livengood asked that this be deferred to the next meeting to see how item 7 goes.

Councilmember Giordano offered a MOTION to set these appointments aside for 45 days; get the report back from staff on how to reach out to more residents, to implement an adequate outreach program and generate more applicants, and also for the Subcommittee to meet and present their recommendations.

Mayor Esteves said he placed this on the agenda because it was a power normally granted to a Mayor; right now there were a few vacancies and he thought it important that all commissions should work as full commissions; when this was brought up earlier, the City Attorney gave a legal opinion; he thought this item was independent of item 7; and asked how the attorney/client privilege could be waived because he wanted to read the City Attorney's opinion on this. City Attorney Steve Mattas responded if the Council agreed to waive the attorney/client privilege, the Mayor could read it.

Vice Mayor Gomez said he thought there already was a motion on the floor. Mr. Mattas said there was a motion but not a second. Councilmember Livengood seconded the motion on the floor.

Mayor Esteves said he wanted to read the opinion as part of the discussion. City Attorney Mattas said the Council needed to waive the privilege before the Mayor could read. Mayor Esteves said he needed to speak and said that by State Law, the Mayor is authorized to make recommendations, subject to approval of the City Council, that was what he had been doing; it also included appointments to regional boards, commissions, and committees; it was even opinionated by the Attorney General; so everybody knew that it was a State Law unless there was another statute, another State Statute that would supercede it, and he was just following State Law. Mayor Esteves asked that the motion be restated.

MOTION to set aside these appointments for 45 days to allow a report back from staff on how to reach out to more residents, to implement an adequate outreach program and generate more applications, and for the Subcommittee to meet and present their recommendations.

M/S: Giordano, Livengood

Councilmember Polanski commented that there were several appointments that normally, through the bylaws, would move up (from an alternate) to a seated position and inquired how this would affect those appointments. City Clerk Gail Blalock explained that the bylaws did not have a provision where alternates automatically moved up when there was a vacancy.

City Attorney Mattas, as a point of clarification, said the third part of the motion was to have the Subcommittee come back with recommendations within the 45 day period; he suggested the Council may wish to hold off on that part of the motion until item 7 was dealt with as they were clearly related to one another. Councilmember Giordano, the maker of the motion agreed to just have the first part of the motion stand, look for the outreach, and bring that back in 45 days. Councilmember Livengood, the second to the motion, also agreed.

VOTE ON MOTION: Ayes: 5

MOTION to approve the Mayor's appointments and reappointments to commissions as stated in the agenda packet.

M/S: Esteves, Polanski.

Councilmember Livengood said he would be happy to consider the Mayor's recommendations after the Council made a decision on item 7; he didn't think he had ever opposed the Mayor's appointments in the past; he had some issues with the way the Mayor had treated him in the past about appointments and some of the favoritism the Mayor had showed to other Councilmembers; he had an issue with that and that was what led him to look at item 7, but he couldn't support the Mayor's motion until he had a chance to look at item 7.

VOTE ON MOTION: Ayes: 2 Noes: 3 (Giordano, Gomez, Livengood)

3.
City Manager Recruitment Process

Councilmember Polanski placed this item on the agenda commenting that the City had had an Acting City Manager for almost two months; there were comments made in an article in last week's Milpitas Post how some members of the Council were looking at the process for replacing the City Manager; she believed it would be most appropriate to review it tonight; and she thought it was important to discuss as a City Council what the process and time line would be. Councilmember Polanski said she had been hearing a lot of rumors and innuendos and discussions in the community about what was going to happen; she heard the Council was going to hold off until negotiations were over so that promises made during the campaign could be kept, but she thought it was important for the Council to have some discussion on the process, what would be a reasonable time line, she knew that the Acting City Manager had served as Acting City Manager in the past, and she thought the Council should let the public know what it was planning to do.

Vice Mayor Gomez said he had made his position clear that he would like to keep the Acting City Manager on board to get through negotiations and also through the budget process; he thought if anybody was brought in during the middle of negotiations or during the budget process, the person wouldn't last more than two weeks; it was his preference to keep the current Acting City Manager on board; he had a lot of faith in the Acting City Manager; he'd done the job before and he was honest, straight forward, and would do an excellent job for the City. Vice Mayor Gomez further stated if Councilmember Polanski wanted a date, he'd be more than happy, when the time was appropriate, to move that the Council start the process on September 1st with the target hire date of early 2006.

Councilmember Livengood said he thought the crux of the situation was do you immediately move into a recruitment mode for your City Manager or do you wait, as Vice Mayor Gomez had mentioned, and let some big issues get resolved. Councilmember Livengood further stated he thought the current Acting City Manager was doing a fine job, he did a great job of interim City Manager seven or eight years ago, he was well respected in the community, he had the respect of the employees, and he had every reason to believe that negotiations would go much smoother this time than they had in the past. Councilmember Livengood said he thought putting this back on the August 1st agenda to get Council direction on how to recruit and what process to use was about the right time.

Councilmember Giordano said the five years she worked at the City of Milpitas there was an interim City Manager; she believed they usually serve six or eight months, even up to a year; that was not unusual and certainly was what she had envisioned when Charlie was hired on to do the job; she agreed with a date later on this year, after some work gets done that needs to be done, and look to fill that spot at that time.

Mayor Esteves said in any good organization he knew, the first thing they hired was the person at the top; however, he was getting the impression from the majority of his colleagues

that they wanted to delay things. Mayor Esteves further stated that he didn't want Milpitas to be tagged as a very bureaucratic city, he would rather be more decisive, and he respected Mr. Lawson but thought the search should start because it could take three, four, or eight months. Mayor Esteves commented that Fremont hired its new manager in four months because it was critical to have someone at the top; he did not want to drag things on; he was glad that each Councilmember was sharing their position with respect to this issue; and his position was to hire the City Manager as soon as possible doing a statewide or nationwide search to get the best.

Councilmember Polanski said she appreciated the comments from the Council since this was the first she had heard some of the dates they had in mind (other than what she had read in the press); she believed the recruitment should begin sooner than later because it could take several months; she also thought the cost of the recruitment should be part of the budget process; direction should be given as to whether a nationwide search or a statewide search would be done so that some preliminary discussions with recruiting firms could be done to see what the cost would be, and to come back with those for the budget process with the cost and a time line.

MOTION to agendize the hiring of the City Manager for August 2, 2005; the Council at that point will make a decision on which direction and which system; in addition, the City Manager or the city Attorney, whoever has the most expertise, will come back in 30 days with different alternative costs for searches (i.e., a nationwide search vs. a statewide search vs. using the City's HR staff).

M/S: Livengood, Gomez.

Mayor Esteves said he would be opposing the motion because August was like a snail's pace; he wanted to move forward and do it as soon as possible.

Councilmember Polanski asked to have the motion separated because she thought having the cost information to include in the budget was critical.

Councilmember Livengood said he would separate them; the first motion would be to agendize this for Council direction at the first meeting in August (August 2, 2005). Vice Mayor Gomez, the second to the motion, agreed. Mayor Esteves said he would still be voting no because it was too long.

VOTE ON (FIRST PART OF) MOTION to agendize the process on August 2, 2005:
Ayes: 3 Noes: (Esteves, Polanski)

Councilmember Livengood said his second motion was that within the next 30 days, the Acting City Manager or the City Attorney come back with cost estimates for doing different types of searches, whether it be local, statewide, or national, and that those costs be sent to the Council in a memo form within the next 30 days. Councilmember Polanski said she would second the motion if it would be part of an agenda item. Councilmember Livengood said that would be fine.

VOTE ON (SECOND PART OF) MOTION to have an agenda item in 30 days with cost estimates:

Ayes: 5

4.
Library UPA Parcel Tax Ballot Measures

Principal Analyst Cindy Maxwell briefly reviewed the two measure placed on the May 2005 special election ballot by the Santa Clara County Library Joint Powers Agency related to library funding. Ms. Maxwell explained the first measure would replace the existing parcel tax ($33.66) with an identical parcel tax for another 10 years; the second measure would add

another $12 to the parcel tax and would take effect only if the first measure was approved; and both measures would require a two-thirds approval by the voters.

Councilmember Polanski said one of the reasons she asked for this to be on the agenda was she thought it was important for the Council to have a discussion; Milpitas was right in the middle of building a new library for its residents; she thought it was important to talk about the tax, especially since it was extending an existing tax; she thought people should be aware that the community did have needs in a lot of areas; she knew that Councilmember Giordano was the City's representative on the JPA; and she did not know if she had any information to share from the January JPA meeting, but thought she had read that the wording for the ballot measures had been discussed. Councilmember Polanski further stated she thought it was important that the Council at least look at it, have a discussion about it, and request staff to consider bringing back a resolution of support, probably at the second meeting in March.

Councilmember Livengood said he was fine with bringing this back; the reason he was not really too crazy about acting on it tonight was because of the other measure that would be before the voters in three weeks; he would rather get that one settled and then move on to the next one, which obviously was going to be the library; as long as it was after March 8th, he was fine with it, and the Council could look at it then and discuss it; he was not committing himself to endorsing it, but felt it was worthy to discuss.

Councilmember Polanski said she was definitely looking at the second meeting in March, which would be after the special election on March 8 for the School District's parcel tax; it was an important issue that the citizens needed to be looking at; and she believed by that time, there would be minutes from the JPA where the JPA actually voted on this issue and the wording.

Councilmember Giordano said she was at the JPA meeting on January 27; it was unanimous by all members of the JPA to place the measure on the ballot; Chairman Don Gage did make a comment earlier that he had spoken to a few of the other members of the group and there was a feeling that many of the members were not going to be campaigning for the actual support of the measures, however, they felt as a group that they needed to put it to the voters to let them decide, but it was not unanimous in terms of where everybody stood on the issue.

MOTION to direct staff to bring a resolution of support of the Santa Clara County Library District JPA May 2005 tax measures to the second meeting in March with the appropriate background information from the JPA, including the minutes.

M/S: Polanski, Esteves. Ayes: 5

5.
Updated Transportation Position Statements

Principal Analyst Maxwell reported that the City Council maintains a set of transportation statements that clarify the City's position on specific transportation issues and projects in a consistent and clear fashion; the proposed updates were reviewed and recommended for approval by the Transportation Subcommittee at their January meeting; and a summary of the changes was included in the Council's agenda packets.

Councilmember Livengood commented that the Montague Expressway BART Crossing was talked about as being a depressed area all the way from behind the Parc Metro project all the way to the station and that triggered a potential lawsuit from the Great Mall about land taking and things like that; he had been told there was an alternative that was a raised platform that also does not cause any type of a grade separation at Montague and asked Ms. Maxwell if she was aware of that.

Ms. Maxwell responded she was just made aware of that a couple of weeks ago; staff was informed by VTA that they had developed an alternative plan as a cost-saving measure that would place the BART track lines above Montague Expressway and would save about $28

million; staff was looking at it now and it would be on the Transportation Subcommittee's agenda next week.

Rob Means said he was looking at the last bullet item that indicated the City would pursue alternative projects to the bike/pedestrian overcrossing at the Union Pacific rail tracks, which was the Yosemite to Curtis Avenue crossing and had been cited in three official documents (Midtown Plan, Trails Plan, Bike Plan). Mr. Means commented that at previous BTAC meetings, staff said Solectron did not want it crossing there, so it was proposed to move it south about 1/3 mile; however, at last night's BTAC meeting, staff said the funds were being redirected to the Creekside Trails. Mr. Means said he was having a problem with someone deciding that they were going to reprogram the money from the Overcrossing to the Creekside Trails without including the Bicycle Commission in that decision; he thought this was a bit premature and it probably should go brought BTAC to get their opinion on this before it was a actually approved.

Ms. Maxwell said she was not familiar with the process as far as the reprogramming of the funds for trails; she did know there had been a lot of discussion with property owners in the area where the overcrossing would be and they had some very serious concerns; there was a continuing discussion about the effectiveness and how much the Overcrossing would actually be used by pedestrians and bicyclists.

MOTION to approve the proposed updates to the Transportation Position Statement.

M/S: Gomez, Giordano. Ayes: 5

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1.
CALL TO ORDER

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 8:20 p.m.

RA2.
ROLL CALL

Present were Mayor Esteves, Vice Mayor Gomez, and Agency/Councilmembers Giordano, Livengood, and Polanski.

RA3.
MINUTES

MOTION to approve the Redevelopment Agency minutes of February 1, 2005, including joint meeting with the City Council, as submitted.

M/S: Gomez, Giordano. Ayes: 5

RA4.
AGENDA

MOTION to approve the Agenda and Consent Calendar as submitted.

M/S: Giordano, Gomez. Ayes: 5

RA5.
PUBLIC ART POLICY

Finance Director Emma Karlen reported in October 2004, the Council approved a Public Arts Policy concept that called for dedicating 1.5 percent of the City's gross annual Capital Improvement Project (CIP) budget for the acquisition and installation of public artworks; to establish initial funding, the City in partnership with the Redevelopment Agency agreed to provide an additional $125,000 annually for each of the first four years of the Public Arts Program. Ms. Karlen said in evaluating the funding portion of the Policy, staff noted two important budget concerns regarding the CIP Budget that required Council consideration: the first was the City's Utility Financial Master Plan, which did not anticipate the Public Arts Policy and, therefore, did not incorporate the funding requirement in future rate adjustments; the second issue in applying 1.5 percent of the CIP Budget was the anticipation of major capital improvement projects in the Midtown in the next four years totaling approximately $80 million, and the fiscal impact of the 1.5 percent would be approximately $1.2 million. Ms. Karlen further stated that because of budget concerns for utility rate adjustments and funding of major capital projects from bond proceeds, staff proposed a refinement to the funding portion of the Public Arts Policy to exclude utility and enterprise fund projects from the

definition of the City's gross annual CIP Budget, establish an initial funding source for the Public Arts Program by providing $125,000 annually in the first four years, upon development of the Public Arts Program Master Plan; and resume funding 1.5 percent of the CIP Budget after the initial four years.

Mayor Esteves inquired if this ever went to the Arts Commission for input. Ms. Karlen responded it did not go to the Arts Commission because she believed it was a budget issue that required Council consideration rather than the Arts Commission consideration.

Mayor Esteves said public art was both funding and the art itself and that was why he needed input from the Arts Commission. Acting City Manager Lawson said staff could go back to the Arts Commission, but staff felt the Arts Commission would approve it at the amount suggested.

Vice Mayor Gomez commented that the $125,000 was a number from the Council to basically get it started. Ms. Karlen responded the funding portion was directed by the Council; in August, the Arts Commission came to the Council and asked for funding of public arts and the Council approved it and asked staff to draft a concept; staff came back in October; the $125,000 was not actually mentioned by the Council back in August; the Council expressed a desire to jump start that program but there wasn't any specific dollar amount; there was mention that other cities fund one percent and the Council decided to fund more; but she believed the $125,000 was discussed with the Arts Commission by the former City Manager.

Mayor Esteves inquired what the impact of $1.2 million would be on the budget in terms of projects. Ms. Karlen responded because most of the projects were funded by the Redevelopment Agency, it would obviously reduce the funding amount for other Redevelopment Agency projects. Mayor Esteves inquired if it would impact specific projects planned right now. Ms. Karlen said there were other projects and other opportunities that may come along in the next four years that may not be included in the bond funding that would require Agency tax increment funding.

Mayor Esteves said for him, public art was also a major opportunity because it enhanced the economy and so many other factors. Mayor Esteves further stated when this was brought up before, he even heard Councilmember Livengood say we have to jump-start because there had been no budget in terms of public art in the last 50 years.

Councilmember Polanski said she would need to go back and review the tape of the October 18 meeting, but it was her recollection that the Council agreed to jump start art because it had been neglected for 50 years, was going to do the $125,000 for the four years plus look at a percentage of 1.5 percent, or up to 1.5 percent of all projects, and that included CIPs; she could see staff wanting to remove the water and sewer projects because those were ongoing maintenance; however, she was disappointed that this recommendation was coming back in this format because she thought this had been decided in October. Councilmember Polanski further stated she thought it should have come before the CIP Subcommittee, which was meeting February 22; she was also disappointed the background did not have the meeting minutes when the Council approved jump starting the program with $125,000; and she would not be able to move any of the staff recommendations until she received the minutes of the meeting where the Council discussed and voted on it.

Councilmember Giordano said she was present at the meeting in October when the Council discussed this and noted in talking to a couple of members of the Arts Commission that the Council did a survey of what other cities were doing and came to an understanding that this was where the Council felt the number was. Councilmember Giordano further stated she didn't know if she would go that far to use the 1.5 percent, but she didn't vote on that as she wasn't on the Council at that time; she was concerned with the fiscal impact and as a member of the Finance Subcommittee, she would like to see this brought through that process to understand what those fiscal impacts would be.

Vice Mayor Gomez said staff had looked at this and brought forward quite a few policy issues that needed to be looked at and given that Councilmember Giordano was a member of the Finance Subcommittee as well as the liaison to the Arts Commission, he felt it would be beneficial to punt this over to the Finance Subcommittee. Vice Mayor Gomez expressed concern that when the Council did this, they were very enthusiastic about getting this in place as soon as possible and what he didn't want to happen was to forward it to the Subcommittee where it might die or be delayed; he would like whoever makes the motion to include some sort of time line as to when this would get back to the Arts Commission, for the Finance Subcommittee to review this and have it back within 60 days.

Councilmember Livengood said he thought the $125,000 was clear, the Council said we need to get some seed money there and get this process started; what was not clear to him was the business about certain public works projects being included in this; he thought it focused on things like the library, the senior center, anything the Council does that's a high profile public project; he supported 1.5 percent to be dedicated for public art for that project so we make sure that every major project that goes forward from this point has an element of public art; he couldn't support delaying the 1.5 percent for four years because a whole bunch of projects would be moving forward in the next four years and that opportunity would be lost; from his perspective, he was okay with the $125,000 and the 1.5 percent but would like more feedback, from these committees being talked about, on exactly the difference between a library and a force main sewer line.

Vice Mayor Gomez said when this came forward, he was the liaison for the Arts Commission and remembered looking at those policy questions and suggested asking the Commission members to come forward to get their sense of it on public works projects and what was the intention of the Arts Commission at the time.

Bill Foulk said he had discussed it with his fellow Arts Commissioners and their feeling was exactly what Councilmember Livengood had said; the Commission was thinking of the library, the senior center, the other major projects, buildings that were going to be built; they saw the agenda and saw sewer lines and came to the same conclusion as Councilmember Livengood that they did not expect to have the 1.5 percent go against the infrastructure of the City.

Vice Mayor Gomez asked if Mr. Foulk was comfortable with the direction the Council was heading. Mr. Foulk said he liked what he was hearing, what Councilmember Livengood said, and thought there was support for the concept; the Arts Commission turned out tonight because this hit them like a lead balloon; they had put a lot of work into this proposal and they thought they had really strong support; they were all charged up as an Arts Commission to get going on these projects and now it was like Daddy took the allowance away and they didn't have enough money to do anything.

Vice Mayor Gomez asked if Mr. Foulk was in agreement with 60 days to get through the committees and get the Commission's recommendations. Mr. Foulk responded the sooner the better.

Councilmember Polanski agreed with Mr. Foulk, she knew the Commissioners had worked on this proposal for over a year so 60 days did seem like a long time for them; she noted that the CIP Subcommittee was meeting on February 22, the Arts Commission meets on February 28, these items could go before both, and she saw no reason it couldn't come back on the agenda by March 15.

Vice Mayor Gomez said the Finance Subcommittee will meet on March 2 and he would like the Arts Commission to have both subcommittee recommendations.

Mayor Esteves said he would like to see this approved tonight since it appeared, based on the discussions, that at least a majority of the Council was in favor of the 1.5 percent for CIP projects that exclude water, sewer, and public works.

Vice Mayor Gomez said he would like an opportunity to narrowly define and actually define how we interpret CIP projects, an opportunity to have these committees come back and define what capital projects will be subject to the 1.5 percent, and he didn't know if that could be done at this moment.

Mayor Esteves said he thought it could because in the CIP there were only five categories and asked Ms. Karlen to review the categories. Ms. Karlen said there were Community Improvement Projects, Parks Projects, Street Projects, Water Fund Projects, and Sewer Fund Projects. Mayor Esteves asked Ms. Karlen to give examples of the projects.

Mayor Esteves said his interpretation was just the Community Projects; he thought the Council could clearly define tonight what was meant by capital improvements and for him, it was just Group 1.

Vice Mayor Gomez said there were still a lot of questions that staff didn't have answers to; he thought the Council needed to find out before making a decision on this; and he agreed with Councilmember Polanski and Councilmember Giordano that this needed to go to the CIP Subcommittee, the Finance Subcommittee, make a recommendation to the Arts Commission, and bring it back to the Council.

Acting City Engineer Greg Armendariz said staff would be happy to provide the level of detail on the Community Improvement Projects and there were some exciting opportunities with the library, senior center, and so forth; staff would be happy to provide that level of detail for each respective project based on the formula as well; and staff could be ready to present it to all of the committees this month and then come back to the Council in March. Mayor Esteves said he heard March 15 as the common target. Vice Mayor Gomez said his preference would be the first meeting in April.

Councilmember Polanski said she had a clear idea of what the Council did and she could understand where staff might have some misunderstanding, especially in category 1; but she believed it needed to go back to the three committees (the Finance Subcommittee, the CIP Subcommittee, and the Arts Commission) for recommendations; she thought the members of the Arts Commission could attend the Finance Subcommittee meeting.

MOTION to direct staff to take the 1.5 percent for Capital Improvement Project budgets to the CIP Subcommittee, the Finance Subcommittee, and to the Arts Commission for recommendations and a clear definition for CIP projects; return with the recommendations to the Council by the March 15 Council meeting; and the $125,000 that had already been dedicated for the first four years to jump start the program begin immediately.

M/S: Polanski, Livengood.

Councilmember Giordano commented that she thought there was a process that needed to be followed and in her view, she would like for the Commission to see what's before them before they put their recommendation forward; she supported the subcommittees meeting preceding that effort and thought waiting another 20 or 30 days made sense to have this channeled through the right process; she would be voting against the motion.

Councilmember Livengood said the work project that he was looking for, and the reason why it was a bad idea to try to wrap this all up tonight was people will be confused about what is in and what is out of this funding, so it had to be very specific and a very defined process; then the Council has to make the policy decision very clear as to what is included and what is not; and he thought it could all be done in 30 days.

Mayor Esteves invited comments from the audience.

Kim Sing said he knew a couple that lived in Milpitas and they decided to pack their bags and move to San Francisco just because of the art thing; the fact that Milpitas for 50 years did not support public art was embarrassing; he would like to include 1.5 percent of all public works projects; agreed that a work of art can't be placed on a sewer but if the money is apportioned, you could have public art on the street; housing would appreciate; art was something the City lives on and he would like the Council to remember that.

Mareile Ogle, Arts Commissioner, said she wanted to say that Milpitas had come a long, long way; we now have gorgeous buildings with others in construction; the parks are beautiful and amazingly clutter and graffiti free; what we desperately need now is to put some class, some status, some ambiance, some creative oomph into our City; other communities smaller than Milpitas have a lot of public art work; she did not want it to be bogged down into little details; it was very important to be concise and not overlook the overall importance to beautify a city so that we have really arrived; and said she would leave copies of a newspaper editorial for the Council with the City Clerk that she thought they might not have had time to read during the campaigns.

Robin Hayes, Arts Commissioner, asked for some clarification commenting that in the beginning, the proposal was for 1.5 percent of all projects; that was cut to only City projects; the monies collected were to go into a fund; that fund was to be used where appropriate, not on the projects; in other words, the sewage would not go to the sewer plant; it would perhaps go to Calaveras or one of the main areas that had been neglected over the last 50 years; she did not feel that was understood by the Council because people kept saying you're not going to put art on a sewage plant; true, but you're going to use that money, that percentage, to go on something else where it's needed and it's been neglected. Ms. Hayes said she had spoken at length with the Finance Director and needed to know the impact on each household of this percentage; she had asked the Finance Director to bring this information tonight; the impact could be one-half penny per household or it could be $10, and that was too much but it needed to be looked at. Ms. Hayes also talked about 1.5 percent of the $80 million for the Midtown Project, or $1.2 million, which was a mere $300,000 a year; and said people preferred to go to Mountain View or Santa Clara or move to San Francisco as the gentleman just said because of the ambiance.

Rob Means said he knew that there was a correlation between the number of trees in a community (actually an inverse correlation) – the more trees, the less crime; and said he was wondering whether a similar study had been done about art in a city and did that have any kind of an impact on crime in the city. Mr. Means further stated if it was actually like trees and there was an inverse impact, then he suggested being more inclusive of what you're going to include under that CIP umbrella.

Harriet McGuire, Arts Commissioner, said she was pleased that this was going forward and Councilmembers speaking about this art policy; it needed to be done and she thought it was all resolved and then all of a sudden, it came back; they had no idea this was coming up until they were sent the agenda and it really kind of upset them; they wanted to get going with this; they wanted to be able to hire a consultant to help them find projects they can work on right away; they'd like it done as soon as possible and not wait 60 days because the longer it was put off, the harder it would be to get going; she didn't want the money to disappear, wanted to get started, to get that consultant, and she appreciated all the Council's efforts and help.

Ernestina Garcia said she was in agreement with Councilmember Livengood and Councilmember Giordano; disagreed with some of the comments that were made about Milpitas smells and that people were moving out of Milpitas because of the arts or whatever; she thought people were moving out because the cost was too high to live here/very expensive; and asked if any of the Council would approve raising taxes because it was very

high right now, especially for someone on a fixed income. Ms. Garcia wanted the Council to know that she was very proud to live in Milpitas and expected to stay in Milpitas forever; if there was art to be done, suggested sending somebody to fix the creeks, to clean the creeks, especially the one by the high school, and to clean the sewers in the street.

Bill Foulk, Arts Commissioner, said the Commissioners got together earlier to talk about this and how they were going to approach the Council; however, as a result of the Council's discussion, he was encouraged at what he was hearing and hoped the Council was going to support close to the original proposal (back in October); as discussed, they could trim back a portion of the total CIP and only do the high profile buildings and projects; it was interesting when the overpass was mentioned, the words high profile came to mind and maybe high profile could mean anything that was 20 feet above the ground or bigger; if you have a big overpass, you might want to put some nice pieces on that as well. Mr. Foulk said he appreciated the sentiment of wanting to get a conclusion, but he was happy with the proposal to have a conclusion on March 15; they will review it and, hopefully, when the staff comes to the Arts Commission meeting on the 28th, they will see some good numbers and move forward with it.

Julie Cherry, Milpitas Alliance for the Arts, said it sounded like the Council was all in full agreement that money should be spent on the arts in Milpitas and for that, we're all very grateful and excited and thrilled that it was happening. Ms. Cherry further stated what she didn't hear was that there was a clear understanding of where this money would come from or where it would be spent; in other words, is the 1.5 percent from the library project going to go into art for that particular library or was the City interested in having a public art fund that was seeded through CIP projects and then you have a master plan for public art and a body that regulates and makes recommendations about where that money is spent. Ms. Cherry also said she wanted to clear up some of the comments that were made about this City not paying for anything for public art for the past 50 years; in fact, the Milpitas Alliance for the Arts (started in 1998) had gotten an amazing amount of support from Milpitas, financial and otherwise, and had four art projects done, of which the City gave $20,000; and last year a couple hundred thousand dollars was allocated to the Art-in-Your-Park project over the next couple of years.

Carmen Montano said she thought this was a great policy and inquired if this project or this funding refinement was to fund local art groups or was it to fund projects throughout the whole City.

Mayor Esteves said the Arts Commission would develop the guidelines. Ms. Montano inquired if there was going to be a Master Plan. Mayor Esteves said he thought so. Ms. Montano said she would like to see some type of commemoration of the Ohlone Indians as they were the first ones here and thought it was a good thing to have this policy for art throughout the City.

VOTE ON MOTION: Ayes: 3 Noes: 2 (Giordano, Gomez)

***RA6. SECURITY FENCING SENIOR HOUSING & COUNTY HEALTHCARE FACILITY**

Approved funding allocation for security fence and one identification sign around the proposed Senior Housing and County Healthcare Facility sites in an amount not to exceed $12,000.

RA7. ADJOURNMENT

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 9:12 p.m.

The City Council meeting continued.

RECESS

Mayor Esteves recessed the City Council meeting at 9:12 p.m. The City Council meeting reconvened at 9:25 p.m.

UNFINISHED BUSINESS

6.
Open Government Ordinance

Assistant City Attorney Richard Pio Roda, using a PowerPoint presentation, presented an overview of the proposed Open Government Ordinance highlighting Brown Act enhancements, maintenance and disclosure of public records, the establishment of an Open Government Commission, the creation of lobbyist registration requirements, public officials calendars, special records maintenance procedures, solicitation of donations by elected officials, and registration/prohibitions on certain activities of former officials. Mr. Pio Roda reported the ordinance would repeal Form 700 review requirements, voting and attendance record requirements, the City Manager's weekly report, requests by City Council through the City Manager, and Councilmember registration requirements when lobbyist or political consultant were retained.

Vice Mayor Gomez commented over the last year, we've all talked about officials being at their best and public officials and managers really are at their best when the public is watching and the public knows what they are doing; he'd heard from several senior staff members that when there was a consultant observing senior staff meetings, things changed, behaviors changed, and certain managers seemed to be on their best behavior; officials are really only going to follow ethical guidelines when they're in full view of the public; a public that can hide what it does will never be accountable to the public it's supposed to serve and the residents won't know what their officials are doing and how decisions are being made; if they don't like what they see, they know what to do come election time and if they tolerate it, it was their choice; everyone had the right to know what their government is doing; the State has laws to help you get answers but over the years, those laws have eroded and with this ordinance, he was hoping to at least reverse that trend. Vice Mayor Gomez said when he wrote this, there were certain goals he wanted to achieve and those were to extend the open meetings requirement to more situations; require earlier and better access to agenda-related information; reduce the frequency of closed sessions, identify high interest categories of records or information to be disclosed readily; print an expedited schedule for producing records; provide for free or low cost access to records; make computer stored information more accessible; make explanations specific when access is denied; provide a ready response to simple inquiries and requests; and create a permanent oversight commission to actually make sure this ordinance works; at the same time, this ordinance tries to balance that information which should be confidential to stay confidential.

Councilmember Giordano asked questions on how the policies would be implemented, the kinds of meetings that would need to be marked down on the Council's calendars, how comments by a person unable to attend a meeting would that be handled, how the Council would provide their calendars three business days after an event, and the requirement for annual training sessions for all commissioners in addition to the Council and staff.

Mayor Esteves questioned if all the attendees at a meetings would have to be listed, commenting that he preferred the current ordinance. Vice Mayor Gomez said he wanted to be reasonable and direction could be provided for staff to change that; the intent was to leave out purely social events.

Councilmember Polanski said there were some areas she would like to see back in this ordinance that will be thrown away; she didn't object to the ordinance or to open government or to whatever information is needed for the public to be aware; her questions were to process, especially with the calendar, and wanted to know what equipment would be supplied or what assistance would she be given to be able to produce all this information in three days.

City Attorney Mattas suggested if the Council desired, given this had a shorter time frame for delivery of the information to the public record, the Councilmembers could be trained on the use of the Outlook Calendaring system and then they could electronically transmit their entries; alternatively, they could be faxed in; from a practical standpoint, since most of the

Council were not in their physical offices everyday, the data would have to be transmitted to some public place within the City so that it's available when they wish to access it; there were technical mechanisms if the Council desired that could be put into play that would allow for the electronic submission; and that would be a process, if the ordinance was adopted, staff could come back with ways to implement.

Councilmember Polanski also mentioned documenting emails, etc., keeping a log, and again wanted to know what would she be provided with to do that or was there a way for the Executive Secretary to the City Manager to be able to do that easily and efficiently.

Vice Mayor Gomez said the bottom line was it really didn't matter to him as long as the information was available; the difference between this one and the current one was that the City Manager's calendar was included; and he was willing to take the current ordinance language and include the City Manager.

Councilmember Polanski inquired who was the supervisor of records for the Council or was that something to be determined; if someone was in violation, who pays for the attorney's fees, and she didn't understand the deletion of the weekly report, which she thought was very informational and valuable.

Vice Mayor Gomez said it was his understanding that the weekly report was already a public record. City Attorney Mattas said the weekly report itself was a public record. Vice Mayor Gomez said he had no problem leaving that in.

Councilmember Polanski said another item in the current ordinance was review of the 700 forms and inquired if the reason it was not included was because they would be scanned on the web; she believed, however, that having either the City Attorney or the Open Government Commission or someone review them even though they are on the web was a good idea; with respect to lobbyists, she would like a provision for lobbyists like the ordinance from the CAC that was rejected by the Council; and she would like to retain the current prohibition for the Mayor and Councilmembers from serving in a voluntary capacity as she personally believed that was bad public policy for Councilmembers to serve in this capacity because it provided them access to certain areas and information not accessible to all Councilmembers. Councilmember Polanski said she was in agreement with most everything else and thought the more that can be provided to the public, the more the public is aware they have access to their City government and was a wonderful thing.

Vice Mayor Gomez, addressing volunteering, said that at the time, he was having a problem figuring out how that relayed to open government, and it just seemed like an issue for a separate meeting and a separate policy discussion altogether.

Mayor Esteves inquired if City employees could volunteer as commissioners. City Attorney Mattas responded the Council had a prior resolution, which was also reflected in the Council's Handbook, prohibiting that.

Councilmember Livengood said the value of having the Council and City Manager's calendars available was that the public would have access to it, and he thought the best way was to have it electronically so it could also be accessible on the City's web site. Councilmember Livengood asked the City Attorney if there was anything in the proposed ordinance that was in conflict with State law. Mr. Mattas responded no, it expanded State law in certain things.

Vice Mayor Gomez said he didn't have a problem striking the section on the Council's calendars and going with the current ordinance as long as it included the City Manager.

Mayor Esteves said he would like to review the section on lobbyists with Dr. Shank's proposal for lobbyists. Vice Mayor Gomez said if the Council wanted to add lobbyists review to see

how the program is working, it could be added to the work plan for the Open Government Commission to take Dr. Shank's proposal and see what portions they would like to include.

Mayor Esteves inquired about the reason for recording closed sessions and expressed concern for the cost associated with it; he thought minutes might be adequate and more cost effective. Vice Mayor Gomez responded the intent was for people to know what goes on in closed sessions, how the Council reaches decisions, and what the Council was thinking and what they were discussing; it was also more cost effective to have a tape recorder than to pay someone to sit in the room and take minutes.

City Manager Lawson inquired about the purpose of retaining recordings for ten hears noting that police records were only held for five years. Vice Mayor Gomez responded the retention period for the records, correspondence, and emails could be reviewed and recommendations made by the Open Government Commission. Mayor Esteves expressed concern for the volume of records. Vice Mayor Gomez clarified the intent was records kept in the normal course of business; if it wasn't the City's practice to keep certain materials, they wouldn't have to be kept. Mayor Esteves inquired about an indexing and retrieval system and asked if a cost would be provided to the Council. Information Systems Director Bill Marion said he would need to work with the City Clerk to determine what form that would take and then staff could come up with a cost. Mayor Esteves also commented on volume saying that right now he didn't see a lot of demand. Vice Mayor Gomez said the problem with just saying these are the most popular records and lets just make those accessible was that it eliminated a whole lot that somebody would request later.

Mayor Esteves said he wanted to focus on what was needed and proceeded to ask questions concerning the duplication fee of one cent and the disclosure of closed session discussions and actions. Mayor Esteves pointed out an error in I-310-2.140c stating that he thought "minimum" of three minutes should be "maximum" of three minutes because you can't require speakers to speak for a maximum amount of time and questioned the three-minute limit for Councilmembers. Vice Mayor Gomez said the intent for Council was just for the Announcement portion of the agenda.

Mayor Esteves said he thought the words "shall be" should be used in place of "should" in I-310-2.170 because he thought it should be mandatory. The City Attorney said he thought "should" was fine.

Mayor Esteves commented the ordinance said we will be providing sufficient resources to the Open Government Commission and suggested developing a budget because it surely would not be unlimited. Mayor Esteves also commented that employees are allowed to speak on information but if they are mistaken and the City is sued, who pays the attorney fees. City Attorney Mattas said that would be a case-by-case decision depending on if they are speaking in the scope and course of their duties.

Mayor Esteves said in summary, he wanted to make sure what we are saying is not theoretical, it can be implemented, is realistic; that we are fiscally responsible because there are some costs, there is some balance with the need, that there is some demand or importance to it; he believed a more practical open government like what we have was adequate; we should not be arbitrary or discretionary; it should define and not leave things to subjectivity; what are we trying to attain and what are the extra benefits to the City and who are the beneficiaries and the stakeholders that we will be spending this extra money for.

City Attorney Mattas said there was a comment earlier when the ordinance was being put together about making Senior Staff meetings open to the public; staff wasn't clear how often the Council wanted that to happen and so there wasn't any language put into the ordinance.

Councilmember Livengood said his intent was that once a month, the Senior Staff meetings with the people who report to the City Manager would be held at a time and place that is

advertised, at an evening time, so that the public can be there, making it as public as we can, and that meeting would be like any other meeting with staff sharing what they are working on, and the public and the press would have access to that one meeting a month.

Councilmember Giordano questioned what other cities do commenting that she had no issue with having the meetings open but it was the time; she would have no problem with it being held during business hours.

Mayor Esteves suggested late afternoon and if the Council was really sincere about opening the meetings to the residents, make it convenient for residents, and that would be the compromise.

Councilmember Polanski said she personally thought they should be during business hours but didn't have any objection to them being open to the public; she thought a compromise might be once a month it be during the day and the next month during the evening for a trial period.

Mayor Esteves suggested trying it during the day for a trial period and seeing what happens, at 11:00 a.m., for one meeting a month.

Vice Mayor Gomez said he wanted to incorporate a number of the comments that had been made and asked the City Attorney how to proceed. City Attorney Mattas said staff could bring the changes back at the next meeting or if the Council wanted to introduce the ordinance tonight, he would have to get the wording down. Vice Mayor Gomez said he had no problem if this came back at the next meeting.

Vice Mayor Gomez offered a MOTION to direct staff to bring the ordinance back at the next meeting with the following changes:

- Take the current ordinance and take the definition of calendars, apply it to this ordinance with the exception that the City Manager be included;
- Eliminate any need for Councilmembers to have supervisors of their records;
- Add the weekly report to the ordinance;
- Have the City Attorney review Statements of Economic Interests (SEI) for Councilmembers, the Planning Commissioners, and the staff members required to fill out SEIs;
- Have staff review Commissioners SEIs;
- Change the wording with respect to the three-minute rule from "minimum" to "maximum;"
- Take out the section having to do with time limits on Councilmembers (limiting Councilmembers to three minutes during the Announcement section);
- Senior Staff meetings once a month to be open to the public.

City Attorney Mattas commented there were a couple of items relating to training for Councilmembers with regard to entering their calendar data into the system. Vice Mayor Gomez said that could be included. City Attorney Mattas said the Mayor had asked that staff come back with options for records maintenance (index of records; records that would be documented) because one of the obligations of the Open Government Ordinance was to maintain records (identifying an index of records and the records to be documented). Vice Mayor Gomez said he thought he had included a timeline but was willing to add a timeline that the index of records shall be prepared within six months of adoption of the Open Government Ordinance, which would allow time to look at all budget issues, have the Open Government Commission review this and if changes are needed, they would report back to the Council.

Mayor Esteves asked if the timeline included the development of the indexing and retrieval system; he wasn't comfortable not knowing the fiscal impact or if there were enough people to man it as it may be difficult for employees to assume this additional load; if there was a plan to have some optical disk indexing system, six months was not adequate to develop an

indexing system unless you buy something off the shelf; and he would need this information before he could vote.

Vice Mayor Gomez said he thought six moths would give enough time to develop the index or identify any issues that could be brought back to the Council.

Assistant City Attorney Pio Roda pointed out that volunteering by Councilmembers was being repealed. Vice Mayor Gomez said if any Councilmember wanted to bring that up, it could be discussed as a separate issue.

Vice Mayor Gomez said that was the motion; Councilmember Livengood seconded the motion.

VOTE ON MOTION (as stated above and including training for Councilmembers for entering calendar data and a timeline of six months for developing an index of records):

Ayes: 4 Noes: 1 (Esteves)

Mayor Esteves said he was not comfortable because of a lot of unknown factors such as cost, fiscal impact, and need, and he still wanted a section on volunteering and other sections as well.

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 11:25 p.m. in honor and memory of Santa Clara County Firefighter Captain Mark McCormack, who died while fighting a fire in Los Gatos on Sunday, February 12, 2005.

Gail Blalock
City Clerk