UNAPPROVED MEETING MINUTES
CITY OF MILPITAS

Meeting Minutes:	**Regular Meeting of the Milpitas City Council**
Date:	**Tuesday, June 21, 2005**
Time:	**6:00 PM Closed Session**
	7:00 PM Open Session
Location:	**City Hall Council Chambers, 455 East Calaveras Blvd. Milpitas, CA**

ROLL CALL

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

MEMBERS PRESENT: Mayor Esteves, Vice Mayor Gomez and Councilmembers Giordano, 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 Legal Counsel – Anticipated Litigation – Initiation of litigation pursuant to subdivision (c) of California Government Code Section 54956.9 (1 case) as plaintiff.

Mayor Esteves adjourned the meeting to Closed Session at 6:00 PM.

Council reconvened in Open Session at 7:00 PM with Mayor Esteves presiding and all Council members present.

CLOSED SESSION ANNOUNCEMENTS

None

PLEDGE

Boy Scout Troop No. 92 led the Pledge of Allegiance.

MINUTES

MOTION to approve the City Council Meeting minutes of June 7, 2005.

Motion/Second: Councilmember Giordano/Vice Mayor Gomez

Approved unanimously by a vote of: AYES: 5
NOES: 0

SCHEDULE OF MEETINGS

Councilmember Polanski announced there would be no Community Advisory Commission meeting on July 6th.

Councilmember Livengood inquired about July 4th schedule meetings. The City Clerk responded those would be canceled for the holiday.

Mayor Esteves said the July 30 Transportation Subcommittee meeting was canceled.

MOTION: To approve the Schedule of Meetings with changes noted.

Motion/Second: Vice Mayor Gomez/ Councilmember Livengood

Approved unanimously by a vote of: AYES: 5
NOES: 0

PRESENTATIONS

Special Presentation
Santa Clara County Realtors Homewords Essay Contest, 2nd place winner Amanda Garcia, 12th grader at Milpitas High School received an award of $750.

Mr. Warren Winness of the Realtors Association presented Amanda with a plaque and her award and congratulated her upon her selection and achievement.

Proclamation
Amateur Radio Week, June 18-26, 2005

Mayor Esteves presented a plaque proclaiming "Amateur Radio Week" to the Radio Club of Milpitas, which has more than 150 licensed amateur radio operators. The groups helps in time of emergencies, free of charge, providing critical communication for Milpitas residents and others. Mr. Bill Dale, President of the Club, accepted the proclamation.

Certificate of Appreciation
The Beverly Heritage Hotel was honored for sponsoring the "A Taste of Milpitas."

Mayor Esteves recognized the hotel as a major sponsor and generous contributor to the special event that was held in Milpitas in May. Mr. Patrick Sampson, General Manager of the Hotel, accepted the certificate from the Mayor, on behalf of the chef and other hard working staff.

Certificate of Appointment
Satish Kumar Bansal, Telecommunications Advisory Commission, Alternate No. 1 was appointed and Mayor presented Mr. Bansal with a certificate. He thanked the Mayor and City Council for his appointment.

CITIZENS FORUM

Mr Frank DeSmidt, Chamber of Commerce government liaison, announced that Mr. Don Peoples was in the audience and would be honored on Thursday, June 23 as the "Business Person of the Year" by the Milpitas Chamber of Commerce at their annual Installation banquet. Mr. Peoples is also the incoming President of the Milpitas Rotary Club.

ANNOUNCEMENTS

Mayor Esteves announced the following:
- Graduations were throughout last week, so congratulations were offered to all schools and students in Milpitas that held ceremonies
- Called attention to the announcement on the last page of the agenda regarding openings for service on the Economic Development Commission and the Open Government Commission. Applications for any interested citizen are available on the website or at City Hall.

Councilmember Polanski announced:
- Milpitas Foundation for Education presented a donation of $27,000, from its fundraising efforts, to Milpitas Unified School District board of trustees at its last meeting of the school year Tuesday.
- While BFI conducts the City's street sweeping, she heard a concern about a lack of the use of water spray over the streets and dust. She asked City staff to review the requirement for street sweeping and to assure residents that proper techniques are followed.
- Valley Transit Authority Board of Directors might recommend a sales tax and she requested that Councilmember Livengood (Milpitas' liaison to VTA) report about this issue at the next meeting. He responded that he would do so.

ANNOUNCEMENT OF CONFLICT OF INTEREST

Councilmember Livengood stated that he would abstain from Item #RA7, due to potential conflict of interest relative to his past employment with KB Homes.

APPROVAL OF AGENDA

MOTION to approve the agenda as submitted.

Motion/Second: Vice Mayor Gomez / Councilmember Livengood

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

CONSENT CALENDAR

MOTION to approve the Consent Calendar, with one change noted.

Mayor Esteves requested to remove Item #9 for discussion.

Motion/Second: Councilmember Polanski / Vice Mayor Gomez

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

* 7. **Approve S-Zone Approval Amendment for 363 Sq. Ft. Building Addition at 2018 Wellington Dr**	Approved S-Zone Approval Amendment (SA2005-40), a request to construct a 363 square foot building addition at 2018 Wellington Drive, based on the findings and special conditions dated June 21, 2005.
* 8. **Approve a Budget Change Form to Release Payment for the Expenses**	Approved a Budget Change Form to Release Payment for the Expenses, Contingent on the Quarterly Reimbursement from the VTA, Associated with a VTA Transportation Demand Management Incentive Program Grant
* 10. **Approve Marquee Request**	Approved a Marquee Request from Ms. Linda Arbaugh, Milpitas Community Library, to use the city hall marquee June 22 - June 30, July 9 - July 16, and July 16 - July 24, to advertise a variety of upcoming summer activities.
* 11. **Approve Budget Transfer of $750.00 to Reorder Child Abuse Prevention Magnets**	Approved a Budget Transfer of $750 from Holding Account HA 1377-2500 to 100-163-4221 for the Re-order of Child Abuse Prevention Magnets, as requested by staff.
* 12. **Accept $1200 From Wal-Mart Safe Neighborhood Heroes Grant**	Authorized the Police Department to accept funds in the amount of $1,200 from WalMart to support National Night Out.
* 14. **Acceptance of Two Grants Approved by the State Office of Traffic Safety**	Two Grants Approved by the State Office of Traffic Safety for Vehicle Speed Feedback Signs and for an Automated Collision & Analysis Tracking System with GIS Capabilities for: 1. Vehicle Speed Feedback Signs (Total cost: $36,800.00) 2. Automated Collision and Analysis Tracking System -- GIS (Total cost: $30,000.00) Adopted two resolutions for the acceptance of the two grants approved by the Office of Traffic Safety to install vehicle speed feedback signs and for an automated collision and analysis tracking system with GIS capabilities.
* 15. **Adopt Resolution of Local Support**	Adopted a Resolution of Local Support for South Park Victoria Drive Pavement Rehabilitation, Project No. 4225.
* 16. **Adopt A Resolution To Release Unclaimed Checks**	Adopted a Resolution to Release Unclaimed Checks, to transfer a total of $ 160.53 in unclaimed checks to the city's General Fund in accordance with Standard Operating Procedures 26-1.
* 17. **Approve Payment Of Annual Hardware Support and Maintenance Fee**	Authorized the City Manager to approve payment of the annual hardware support and maintenance fee to Data911 through June 30, 2006.
* 18. **Award Contract to American Baseline Co.**	Awarded Contract to American Baseline Company to Provide Surveying Services and Prepare Legal Description for Waterline to Minnis Tank, in the amount of $7,000.
* 19. **Annual Hardware Support And Maintenance Fee**	Authorized the City Manager to Approve Payment of Annual Hardware Support and Maintenance Fee to TriTech Software Systems for the Stratus Server that Supports the Computer Aided Dispatch System Through March 31, 2006.
* 20. **Payment to the Milpitas**	Approved payment to the Milpitas Unified School District in the amount not-to-exceed

Unified School District – for Use of School Swimming Pools	$9,500 for rental of the Milpitas High School pools for the 2005-2006 summer season.
* 21. **Agreement Amendment: Raines, Melton & Carella, Inc. for Sewer Deficiency and Structural Correction Program**	Authorized the City Manager to execute the agreement amendment with Raines, Melton & Carella, Inc, in the amount of $61,530, subject to approval as to form by the City Attorney.
* 22. **Contract Change Order: 2005 Street Resurfacing Project**	Authorized the City Engineer to execute the Contract Change Order with Interstate Grading and Paving, Inc. in an amount not to exceed $75,000, for additional paving work.
* 23. **Award Bid For Storage Containers**	Awarded contract for storage containers at the Main Sewer Pump Station to American Portable in the amount of $10,364.96.
* 24. **Award Bid For UPS Batteries**	Awarded bid for UPS Batteries to US Power, Inc. in the amount of $22,154.10.
* 25. **Purchase Order: Constructware Solutions Group License Renewal**	Authorized staff to execute a purchase order with Constructware Solutions Group, in the amount not to exceed $15,000.00, for Project Nos. 8154 and 8162, subject to approval as to form by the City Attorney.
* 26. **Renewal for Excess Workers' Compensation Insurance**	Approved acceptance of ACE Insurance Company for the City's excess workers' compensation insurance for FY 2005-06, authorizing the Interim City Manager to pay Brown & Brown of California the premium rate of $202,579.
* 27. **Bid Proposals: Police Evidence Freezer**	Approved Specifications and Authorized the Advertisement for Bid Proposals for the Police Evidence Freezer, Project No. 8159.
* 28. **Right of Way Use Agreement with NextG Networks**	Approved Right-of-Way Use Agreement with NextG Networks, Inc., Project 2413 for the placement of antenna units on City light poles.
* 29. **Contract Agreement with Wildlife Center of Silicon Valley for Animal Control Services**	Authorized the City Manager to execute a contract agreement with Wildlife Center of Silicon Valley to provide wildlife services in the amount not-to-exceed $6,336 subject to approval as to form by the City Attorney.
* 30. **Agreement Amendment: Group 4 Architecture Research + Planning, Inc., Library Project**	Authorized the City Manager to execute the agreement amendment with Group 4 Architecture Research + Planning Inc. in the amount not to exceed $164,000, subject to approval as to form by the City Attorney, for Project No. 8162.
* 31. **Approve Specifications and Authorize to Advertise for Bid Proposals for Tot Lot Sunshade**	Approved Specifications and Authorized for advertisement for bid proposals for the construction of the new Shade Structure for the Community Center Day Care Facility for Project No. 8102.
* 32. **Right of Way Agreement with CA DWR to Operate and Maintain its Transmission Water Line within Piedmont Rd.**	Approved Right-of-Way Agreement with California Department of Water Resources to operate and maintain its Transmission Water Line within Piedmont Road and Authorized the City Engineer to execute the agreement, subject to the approval of City Attorney as to form for Project No. 3174 .
* 33. **Approve Payment**	Approved Payment Requests to the following Vendor and Contractor:

Requests to Two Vendors / Contractors

1) $5,541.91 to Data 911 Systems for the repair and upgrade of two Police Mobile Data Systems. The work was performed as an emergency pursuant to Milpitas Municipal Code I-2-5.04 of the "Emergency Authority of Purchasing Agent" and,

2) $16,554.00 to the U.S. Postal Service for the annual replenishment of postage meter funds for the City's outgoing metered mail for the Purchasing Division.

PUBLIC HEARINGS

1. Fairfield Midtown Vesting Major Tentative Tract Map; Create 481 Condominium Units

Consider the Approval of the Fairfield Midtown Vesting Major Tentative Tract Map (MA2005-4) Application to Create Two Parcels, Located at the Corner of Abel, Main, And Great Mall Parkway and Create 481 Condominium Units (APN'S: 086-12-015, 016, 020) Zoned R4-TOD (Multi Family Very High Density With A Transit Oriented Overlay). Applicant: Fairfield Residential LLC

Recommendation: Keep the public hearing open and continue the project to the July 5, 2005 City Council meeting.

Acting Planning Director Tambri Heyden, who stated the applicant requested to continue the public hearing to the next City Council meeting on August 2, presented this item. The Mayor asked for comments from the public and heard none.

MOTION: Keep the Public Hearing open and continue the hearing date to the August 2, 2005 Council meeting.

Motion/Second: Councilmember Gomez / Councilmember Polanski

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

2. Resolution Approving Annual Engineer's Report and The Levying of Assessment: Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch, Program 9474

Staff Mehdi Khaila presented the Annual Engineer's Report about the scheduled assessment for the District. Total assessment for the district is $257,523 for Fiscal Year 2005-2006. The assessment for Fiscal Year 2005-2006 is within the previously approved range of assessments and includes the application of the approved annual Consumer Price Index (CPI) escalation.

Engineer Khaila welcomed questions from the Council. The Mayor opened the public hearing to hear any public comments and none were received.

(1) MOTION: Close the Public Hearing

Motion/Second: Councilmember Gomez / Councilmember Giordano

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

(2) MOTION: Adopt a Resolution approving Annual Engineer's Report, Confirm the Diagram and Assessment, and Order levy of assessments for fiscal year 2005-2006, for Landscaping and Lighting Maintenance Assessment District No. 95-1.

Motion/Second: Vice Mayor Gomez / Councilmember Polanski

Resolution adopted unanimously by a vote of: AYES: 5
NOES: 0

3. Resolution Approving Annual Engineer's Report and The Levying of Assessment:

Staff Mehdi Khaila presented the Annual Engineer's Report about the scheduled assessment for the District. Total assessment for the district is $32,436.04 for Fiscal Year 2005-2006. The assessment for Fiscal Year 2005-2006 is within the previously approved

Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon, Program 9489

range of assessments and includes the application of the approved annual Consumer Price Index (CPI) escalation.

Engineer Khaila welcomed questions from the Council. The Mayor opened the public hearing to hear any public comments and none were received.

(1) MOTION: Close the Public Hearing

Motion/Second: Councilmember Giordano / Councilmember Polanski

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

MOTION: Adopt a Resolution approving Annual Engineer's Report, Confirm Diagram and Assessment, and Order levy of assessments for fiscal year 2005-2006, for the Landscaping and Lighting Maintenance Assessment District No. 98-1.

Motion/Second: Councilmember Giordano / Councilmember Polanski

Resolution adopted unanimously by a vote of: AYES: 5
NOES: 0

***4. Introduction of Ordinance* Adopting Local Electrical Code Amendments in Conjunction with State Adoption of the 2004 Edition of CA Electrical Code**

Staff Keyvan Irranejad presented the report and explained the requirement for the City to adopt the Electrical Code with local amendments. Significant amendments under proposal relate to the requirement for all new electrical services to be installed underground and for electrical disconnecting means to buildings to be at readily accessible locations for quick and safe power turn-off in emergency situations.

Senior Building Official Irranejad welcomed questions from the Council. The Mayor opened the public hearing to hear any public comments and none were received.

(1) MOTION: Waive the first reading beyond the title Ordinance No. 65.134

Motion/Second: Councilmember Polanski/Councilmember Livengood

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

(2) MOTION: Introduce Ordinance Number 65.134 enacted as Chapter 6, Title II of the Milpitas Municipal Code to adopt and revise local amendments to the 2004 Edition of the California Electrical Code.

Motion/Second: Councilmember Gomez / Councilmember Polanski

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

(3) MOTION: Adopt a resolution citing findings of fact providing reasons for amendments to the 2004 California Electrical Code

Motion/Second: Councilmember Gomez/ Councilmember Polanski

Resolution adopted unanimously by a vote of: AYES: 5
NOES: 0

UNFINISHED BUSINESS NONE

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER

Mayor/Agency Chairman Esteves called to order the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 7:26 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 June 7, 2005 including joint meeting with the City Council, as submitted.

Motion/Second: Agency/Councilmember Polanski / Agency/Councilmember Giordano

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

RA4. AGENDA

MOTION to approve the Agenda as submitted

Motion/Second: Agency/Councilmember Polanski / Agency/Councilmember Giordano

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

RA5. Resolution of Necessity to Acquire Properties (APN Nos. 028-24-014, 015, 020 + 026) for the Milpitas Library

City Attorney Steve Mattas presented for the Agency's consideration a resolution of necessity, regarding property owned by the Winsor family. The Redevelopment Agency received an appraisal and made an offer for purchase to the property owner. The offer was not accepted by the owner. The Agency sought to acquire property for the new library site location. As previously reported to Council/RA, an Environmental Impact Report was completed and certified on this project

The request was to adopt the resolution making four findings as stated in the resolution. The City Attorney stated it would require a 4/5 vote to be adopted by the Agency. The Mayor then asked for comments from the Public.

Mr. Don Peoples, spoke as a representative of the Downtown Association. He felt eminent domain could cause anxiety but this project was very valuable for the benefit of all residents/citizens. He asked the Agency/Council to proceed with the resolution and the City's library plans.

MOTION: Adopt the Resolution of Necessity for eminent domain proceedings to Acquire Properties identified as Assessor Parcel Numbers 028-24-014, 015, 020 and 026

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

Resolution adopted unanimously by a vote of: AYES: 5
NOES: 0

***RA6. Approve Policy Amendments to the City of Milpitas Redevelopment Agency Affordable Housing Documents**

Approved the recommended policy amendments to the Redevelopment Agency's affordable housing documents to comply with CALHFA guidelines for financial assistance.

Motion/Second: Councilmember Polanski / Vice Mayor Gomez

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

***RA7. Authorize City Manager to Execute an Agreement Amendment for**

Authorized the City Manager to execute the agreement amendment with Swinerton Management & Consulting in the amount of $200,000, subject to approval as to form by the City Attorney.

Consultant Services: Swinerton Management & Consulting; Project Nos. 8134, 8154, 8157 and 8165

Motion/Second: Councilmember Polanski / Vice Mayor Gomez

Motion carried by a vote of:

AYES: 4
NOES: 0
ABSTAIN: 1 (Livengood)

RA8. ADJOURNMENT

Mayor Esteves adjourned the Redevelopment Agency meeting at 7:32 PM.

REPORTS OF OFFICERS AND BOARDS – None

NEW BUSINESS

5. Farmer's Market Status Report

Principal Administrative Analyst Cindy Maxwell presented the report and she introduced Mr. John Silveira of the Pacific Coast Farmers' Market Association. Mr. Silveira distributed a handout for the City Council about his organization, the sponsor of the Milpitas Farmer's Market.

At issue was the location for the bi-weekly Farmer's Market, currently hosted at Towne Center parking lot every Wednesday and Sunday. All customers, city staff and the Association would like the activity to remain in Milpitas, so a new site is sought. Staff mentioned potential need for zoning district temporary permits.

Ms. Maxwell referred to potential sites, as identified in a handout given to Council.

Mayor Esteves commented that a number of residents called him about this issue, stating they enjoy the market and want it to continue. Of course, the market brings visitors to the City. Favorable solutions were needed soon, he observed.

Various sites were discussed including the Serra Center, and downtown Milpitas. Several Councilmembers voiced support for Serra Center parking lot.

The Mayor asked for public comments.

Mr. Don Peoples, Milpitas resident, gave his view that downtown would be a great place for Farmer's Market and it would bring more people there. He offered his assistance and help as needed. He pointed out that parking would be an important aspect to this location.

Mayor Esteves inquired how many parking spaces were needed. Mr. Silveira responded that typically 75 spaces for booths were set up in a parking lot, then 40 parking spaces for the farmers, and approximately 150-200 spaces for customers.

MOTION: Receive the Staff Report, with recognition that time was of the essence, and that the quicker this item returned to City Council, the better for all concerned.

Motion/Second: Vice Mayor Gomez / Councilmember Polanski

Motion carried unanimously by a vote of:

AYES: 5
NOES: 0

6. Approve Supplemental Funding for Library Monday Hours

Principal Administrative Analyst Cindy Maxwell presented the report, and gave a history of recent library closures due to Santa Clara County policies, and particular budget issues. Milpitas Librarian Linda Arbaugh was introduced.

Currently, the Milpitas Library is open to the public a total of 53 hours, while it used to be 62 hours/week. Cost calculations provided for opening on Mondays were presented in a report to the Council with four choices given.

Councilmembers supported additional hours, especially on Mondays, and stated concerns about informing the public about any proposed change in library operating hours. More public information may be needed.

Councilmember Livengood inquired about the fact that while the Council requested last August that the library Joint Powers Authority use City money to keep the library open on Mondays and was rejected, but apparently now the JPA would accept City funds for library operations? Councilmember Giordano responded that the JPA has changed their position on City funding Monday hours (vs. past).

Much support was voiced for maintaining the library open for the public until 9:00 PM and for the library opening at a similar hour each morning.

Councilmember Livengood thanked the County Library JPA for the opportunity to increase Milpitas Library hours and he wanted to give them credit for accepting city funding into the current JPA.

MOTION: Approve identified Options C and Option D together (opening library 10 AM – 9 PM Mondays plus Tuesdays 10 AM – 12 Noon), to approve budget amounts necessary for those options (total of $310,857), and to cancel the previously approved Milpitas High School extra hours in FY 2005-06 option.

Motion/Second: Councilmember Livengood / Vice Mayor Gomez

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

9. Library Operation Alternatives

Principal Administrative Analyst Cindy Maxwell presented the report. She reviewed the need for an update to a previous report about Milpitas library services within the Santa Clara County district. The new report called for by Council would increase the number of cities to compare against Milpitas to four, provide for better benchmarking, and called for possible alternative models of operation. In the report to Council was a lengthy update to the 2003 study.

Also, a draft Request for Proposals was presented to solicit a consultant, a draft agreement and scope of services. Staff recommended that the Council receive and file this report, and approve the RFP and budget item ($60,000) to pay for the services.

Mayor Esteves expressed his concern for 1) scale of operations and 2) the excellence of the service that the County provides to Milpitas now.

Councilmember Giordano stated she believed it was a short term investment for long term yield, and that the recommendation was very appropriate at a good time.

Ms. Maxwell said staff would return to Council in October with the selection of the consultant, then would entail four months for the study, with a final report due back in February or March 2006.

Councilmember Polanski asked whether the consultant's report would go before the Library Advisory Commission ("LAC") to get feedback? Ms. Maxwell responded, no, since staff was not asked to do so. She pointed out that the LAC did not review the first 2003 report.

Councilmember Polanski would like that Commission to review the new consultant report to provide any feedback, as well response on going out for proposals on the consultant. Mayor Estevez agreed with her with respect to the LAC's role.

Councilmember Giordano commented that Council did not bring the subject of additional hours to the LAC either, and Council could go forward on spending for this now,

MOTION: request staff to issue Requests for Proposal for a library consultant, and that prior to starting his/her work, the staff bring to the Library Advisory Commission the basic information presented to Council at this meeting, and if any comments before the consultant begins, make those known then Council can move forward with the LAC comments known. The motion also included allocating $60,000 in funds to cover costs.

Motion/Second: Councilmember Livengood/Vice Mayor Gomez

Motion carried by a vote of: AYES: 4
NOES: 1 (Estevez)

ORDINANCES

13. Introduce an Ordinance 139.3 Granting a Franchise to Comcast

Director of Information Services Bill Marion discussed this topic introducing an Ordinance 139.3 Granting a Franchise to Comcast of California/ Colorado/ Florida/ Oregon, Inc., to Construct, Operate, and Maintain a Cable System in the City of Milpitas, California Setting Forth Conditions Accompanying the Grant of the Franchise; Providing for Regulation and Use of the System and the Public Rights-of-Way and Prescribing Penalties for the Violation of the Provisions Herein.

He gave an overview of the history of franchise renewal negotiation, steps in that process, the compilation of needs assessment, the negotiation process, and now before the City Council the adoption of the franchise as a City ordinance. He referenced the Telecommunications Commission's involvement, too, in the negotiation process.

The needs assessment identified seven areas of concern:
1. Customer Service
2. On-line Channel Directory (program guide)
3. Service Quality
4. Compliance to Applicable Codes
5. PEG Channels and Local Public Access
6. Cultural Programming
7. Emergency Broadcast Capability

Furthermore, Mr. Marion stated those concerns in his report and addressed how these would be met. The major need identified was public education. Therefore, an additional public channel was recommended for Milpitas, and this yielded the requirement that Comcast provide another public access channel and a studio under this new agreement.

Also, Mr. Marion explained that presently Milpitas had only one outlet for government, via Channel 15 only. Ideally, three channels would meet the identified community needs for: education, community access and government. In cooperation with the school district in Milpitas, the new franchise calls for a "shared" channel in order to meet two of the needs together: educational and public access.

Mr. Marion mentioned the response to a need for additional diverse programming to reflect the City's demographics, and Comcast has added nine additional international channels for subscribers at no additional cost.

Councilmember Livengood stated that on School District property might not be the best choice location for a public access studio. He strongly urged finding a better choice than a school site for a cable television studio.

Mr. Marion stated that the Telecommunications Commission had a school district representative serving, who actually provided that suggestion. Mr. Livengood was concerned about expensive equipment on a campus site, especially with no students or staff located and working there over summer.

Councilmember Polanski suggested that City staff look at space next to the Milpitas Sports Center as a location for a public access studio because it's not as restricted as other school sites.

The Telecommunications Commission reviewed the franchise and recommends its adoption. Commissioner Mr. Niranjan Gupta was recognized from the audience. He discussed the Comcast franchise at Commission meetings including how to bring the third channel to Milpitas. The educational aspect was critical, he said, and Commissioners reviewed many sites for a new studio, including some within the Milpitas Unified School District, to date.

Mr. Eddie Garcia, local Comcast representative was present and provided comments. He commended staff and Commissioners for innovative ideas, including the school partnership as very innovative, to enable partnerships Comcast, MUSD and City could bring public access television to viewers. Comcast fully supports the staff recommendation.

Councilmember Livengood inquired about the franchise fees. 5% of Comcast revenues must be shared with the City, Mr. Marion responded. Mr. Livengood then inquired about high speed cable internet access and fees. Mr. Marion explained a Court ruling that stated this is not permitted as a "high speed data service" interstate commerce and so it was not subject to local authority regulation Mr. Marion also explained that an expanded definition of gross revenues helps with the collection of the 5% revenue.

Councilmember Livengood asked the Comcast representative about hours of operation at its storefront in Milpitas. Mr. Garcia replied that the store was open 10 hours per day, 6 days a week, in the local shopping center (Towne Center).

City Attorney Steve Mattas noted there was language at the end of the franchise ordinance Section 6 regarding the location of the cable access station location, noted in a MUSD facility. He provided suggested language that would permit more flexibility in selection of the studio location when it might be built in the future. He offered to write the amendment if the Council so instructed.

(1) MOTION: Waive reading beyond the title of Ordinance 139.3

Motion/Second: Councilmember Livengood/ Vice Mayor Gomez

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

(2) MOTION: Introduce Ordinance No. 139.3, Cable Television Franchise agreement, including amendments to Section 6, per the City Attorney, regarding the location of the PEG cable access television studio.

Motion/Second: Councilmember Livengood/Councilmember Giordano

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

ADJOURNMENT Mayor Esteves adjourned the meeting at 8:57 PM.

Respectfully submitted by:

Mary Lavelle, City Clerk