UNAPPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	October 7, 2003
Time of Meeting:	5:30 p.m. (Closed Session) 7:00 p.m. (Regular Session)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 5:30 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Gomez (arrived at 5:39 p.m.), Livengood (arrived at 5:31 p.m.), and Polanski.

CLOSED SESSION

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

1. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
   (Pursuant to Government Code Section 54956.9[c]}
   Initiation of Litigation: One Case

2. **CONFERENCE WITH LABOR NEGOTIATOR**
   (Pursuant to Government Code Section 54957.6)
   Agency Negotiator: Thomas Wilson
   Employee Organization: IAFF Local 1699

Mayor Esteves adjourned the meeting to closed session at 5:30 p.m.

The City Council meeting reconvened at 7:05 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Gomez, 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

City Manager Thomas Wilson reported that on page 2 of the September 16, 2003, Council minutes under Citizens Forum and again under Announcerments, "Mr. David" should be corrected to read "Mr. Davis."

MOTION to approve the City Council minutes of September 16, 2003, including joint meeting with the Redevelopment Agency, as amended on page 2 to correct the spelling of Mr. Davis' name.

M/S: Gomez, Polanski. Ayes: 5

SCHEDULE

Councilmember Polanski reported the 50th Anniversary Committee would be meeting on Wednesday, October 29, 2003, at 7:00 p.m. Vice Mayor Dixon reported the 5:00 p.m. Civic Center meeting scheduled on October 21, 2003, would be held on October 20. Councilmember Livengood said he believed the Library Subcommittee meeting was scheduled for Wednesday, October 8, 2003, at 7:00 p.m.

MOTION to approve the Schedule of Meetings as amended.

M/S: Gomez, Polanski. Ayes: 5

PRESENTATIONS

Mayor Esteves presented a Certificate of Appointment to Justin Nguyen, Alternate No. 1 on the Youth Advisory Commission; Aditya Ullal, Alternate No. 2 on the Youth Advisory Commission, was not present to receive his certificate.

Mayor Esteves read a proclamation proclaiming October 17-19, 2003, as "Help Mentally Disabled People Days," and presented copies to Knights of Columbus St. Johns Council No. 5796 and St. Elizabeth Council No. 8747. A representative from St. Johns' Council No. 5796 accepted the proclamation stating that the proceeds of the fund drive would go to the Special Education Class at Milpitas High School. A representative from St. Elizabeth's Council No. 8747 accepted the proclamation stating stated this was the 16th year of this particular fund raising drive and acknowledged Milpitas High School Special Education teacher Brenda Wong.

Mayor Esteves read a proclamation proclaiming October 5-11, 2003, as "Fire Prevention Week" and presented it to Fire Chief Weisgerber. Chief Weisgerber reminded everyone that at the end of the month when clocks were changed for day light savings time, it was also a good time to change smoke detector batteries.

Mayor Esteves read a proclamation extending appreciation to Tim Howard for his extraordinary contributions to the welfare of Milpitas, and presented it to Mr. Howard. Mr. Howard thanked the City for its generous support of the Chamber of Commerce annual Art and Wine Summer Festival.

Mayor Esteves presented a Commendation to Joe Santoro and the South Bay Kids for their musical contributions to the community.

Guan Alisantosa, coordinator of one of the National Night Out event locations, presented a Community Service Award to Joe Santoro and the South Bay Kids, expressing appreciation for the work they did for the National Night Out Event.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer and when the red light at the podium came on, two minutes would be up.

Paul Hay announced his resignation effective November 1, 2003, from the Planning Commission, the Transportation Subcommittee, and as the City's representative to the County H/CD Citizens Advisory Committee. Mr. Hay said his resignation was due to an employment change and expressed appreciation to the Council and the Planning staff and wished them all success in the future.

Finn Wallace said he was a 28 year resident and inquired if any consideration had been given to adding an extra story or two to the City Hall or if there were any cost estimates of doing this. City Manager Wilson explained that the Council had authorized completion of the fourth floor of the building, which was currently underway; and the building was projected to serve the City for at least a 30 year life.

David Richerson said he enjoyed the VTA/BART Policy Advisory Board meeting held in the Council Chambers the day before and hoped more meetings would be held at City Hall.

Issac Hughes complained about the condition of the streets in Milpitas, especially the potholes at intersections, and said he hoped some money had been set aside for street maintenance.

ANNOUNCEMENTS

Vice Mayor Dixon congratulated members of the community for their hard work on the recent 3-day book sale held at the Library by the Friends of the Milpitas Library that brought in over $6,000; the Santa Clara County Library system for the 3rd year in a row had ranked #1 on the Hennen American Public Library rating; the VTA Policy Advisory Board had met the previous day and unanimously voted to complete the full alignment of seven stations with the

alternative of an additional station at Calaveras, proposed that the VTA staff do more analysis studies, more public input, and include an Alum Rock station; at the upcoming VTA Policy Committee (comprised of cities that do not have a voting member on the VTA Board), the restructuring requests of Milpitas will be discussed; at the VTA Board meeting of the previous week, due to the recent decision made by the court to allow the bonding of future sales from Measure A, the anticipated 21% cut to the BART system had now been reduced to 3%, which they would try to keep relegated to the least productive routes; Vice Mayor Dixon felt Milpitas overall would come out pretty good as far as bus availability. Vice Mayor Dixon, referring to the recent opening of Milpitas' first Dog Park, thanked staff for all the work done; Wednesday, October 8, 2003, was the "National Walk to School Day" sponsored by the City and the Milpitas Foundation for Education through a grant from the Traffic Safe Communities Network of Santa Clara County. Vice Mayor Dixon requested that the Council meeting be adjourned in memory of Mr. Jon Minnis, owner of Milpitas Materials, and Pastor Esteves, father of the Mayor and who was an attorney and Council Member in the Philippines. Mayor Esteves said he would also adjourn the meeting in memory of Joanna Chen, who was very active at Terrace Gardens.

Councilmember Polanski thanked Mr. Hay for his years of dedicated service to the City; announced that the Community Advisory Commission would be holding its 3rd Annual Town Hall Meeting on Thursday, October 9, 2003, at 7:00 p.m. in the Community Center; Saturday, October 4, 2003, was "Arts Day" in California and thanked all involved in making the day a success; informed everyone that on Saturday, October 11, 2003, from 11:00 a.m. to 4:00 p.m., there would be a ceramic tile workshop for those interested in the "Art in the Park" project at Hillcrest Park where everyone could make their own tile for the art work; mentioned that Milpitas' 50th Anniversary would be January 26, 2004, and a committee was working on some exciting activities.

Mayor Esteves reported there would be a tour on the existing BART stations to highlight the urban design, the public/private partnership, density transition, integration of new development into existing neighborhoods, and parking issues and invited everyone to join him for the BART Land Use Tour on Friday, October 17, 2003, from 8:00 a.m. to 12:30 p.m.; the Mayor also requested the information be placed on Channel 15. Mayor Esteves further stated that at the next Council meeting, staff would be reporting on the City's Capital Projects.

AGENDA

MOTION to approve the agenda as submitted.

M/S: Dixon, Livengood.

David Richerson requested that the public speaking time for the second public hearing item, the Odor Regulation, be extended from two minutes to three minutes. City Attorney Mattas stated the request could be taken up at the beginning of the Public Hearing item, if the Council so desired.

VOTE ON MOTION: Ayes: 5

CONSENT CALENDAR

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

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as submitted, in accordance with the staff recommendations.

M/S: Gomez, Livengood. Ayes: 5

***5. Youth Advisory Appointments**

Approved the Mayor's appointment of Calvin Rodil Tsai and the reappointments of Coel Agustin, Samantha Beard, Anisha Choudhury, Norman Hall, Daniel Hay, and Veronica Yee to the Youth Advisory Commission, all terms expiring September 2004.

***7. Youth Sports Grant**

Approved one Individual Youth Sports Assistance grant of $500 for Evan Meisner as recommended by the Parks, Recreation, and Cultural Resources Commission.

***9.** **Adopt Ordinance No. 239.3**	Waived full reading of the ordinance and adopted Ordinance 239.3 repealing and replacing Title XI, Chapter 16, of the Milpitas Municipal Code.
***10.** **Spring Valley Heights Homeowners Association**	1. Approved the water supply agreement with Spring Valley Heights Homeowners Association, subject to approval as to form by the City Attorney, and contingent upon approval by the San Francisco Public Utility Commission. 2. Adopted Resolution No. 7350 and authorized request to the Local Area Formation Commission for administrative approval of water service to Spring Valley Heights Homeowners Association.
***11.** **Recycling Grant Funding to Department of Conservation**	1. Adopted Resolution No. 7351 authorizing grant funding submittals. 2. Approved the Budget Appropriation for $18,362.53. 3. Authorized the City Manager to execute a purchase order with Earthcapades for educational programs to promote residential recycling services in schools at an amount not to exceed $9,600.00.
***12.** **2003 Street Slurry Seal (Project No. 4182)**	Authorized City Engineer to execute a change order in the amount not to exceed $33,000 to Bond Blacktop, Inc. for 2003 Street Slurry Seal (Project No. 4182).
***13.** **South Bay Water Recycle (Project No. 6093)**	Authorized Contract Change Order No. 30 in the amount of $35,495.33 for Phase Two of South Bay Water Recycling Program (SBWRP) to South Bay Water Recycle (Project No. 6093).
***14.** **Senior Nutrition Program**	Approved the First Amendment to the Contract between the County of Santa Clara and the City of Milpitas for the Senior Nutrition Program, subject to approval as to form by the City Attorney.
***15.** **Community Center (Project No. 8102)**	Authorized the City Manager to execute contracts with Harry L. Murphy, Inc. for Community Center (Project No. 8102) flooring in an amount not to exceed $43,169 and with R. Brothers Painting, Inc. for painting in an amount not to exceed $28,579, subject to approval as to form by the City Attorney.
***16.** **Civic Center Security**	Authorized the City Manager to execute an amendment to extend the agreement through December 31, 2003, with the California Land Management in an amount not to exceed $21,000, subject to approval as to form by the City Attorney.
***17.** **Janitorial Service**	Awarded the new contract for janitorial services to Diversified Maintenance Services, Inc., subject to approval as to form by the City Attorney, and authorized the expenditure in an annual amount not to exceed $143,930.85.
***18.** **Traffic Signal Lamps (Project No. 4167)**	Awarded the bid for the purchase of the LED signal lamps (Project No. 4167) to the lowest bidder, JAM Services, Inc. in the amount of $51,051.00.
***19.** **Police Vehicles**	Awarded the bid for the vehicles to S & C Ford as the lowest bidder in the amount of $192,173.35 which includes taxes and freight and authorize the use of the Federal Asset Seizure Fund in the amount of $3,151.62 from the Police Department Capital Outlay budget.
***20.** **Swing Sets for Parks**	Awarded the bid for the purchase of the swing sets to the lowest bidder, Edwards and Associates, in the amount of $11,049.97.
***21.** **Water Tank Cleaning (Project No. 7066)**	Awarded the contract for the water tank cleaning services to the lowest bidder, LiquiVision Technology in the amount of $38,300.00, subject to approval as to form by the City Attorney.

***22.**
Fire Department Modular Trailer

Authorized the City Manager to execute agreement between the City of Milpitas and Northern California Training Institute for the lease of Fire Department modular trailer, subject to approval as to form by the City Attorney.

***23.**
Payroll Register

Approved Payroll Register for the period ending September 6, 2003, in the amount of $1,630,810.41.

PUBLIC HEARINGS

1.
Fire Department Fee Increases

City Manager Thomas Wilson reported this item was being continued to the October 21, 2003, Council meeting to allow staff more time to prepare the information and staff was recommending that the public hearing be opened and continued to October 21, 2003.

Mayor Esteves opened the public hearing.

MOTION to continue the public hearing to October 21, 2003.

M/S: Dixon, Polanski. Ayes: 5

2.
Odor Regulation & Control Discussion

City Manager Thomas Wilson reported for this public hearing, all the potential emitters of odors the City was aware of over the past year were invited; in addition, the regulatory agencies consisting of the City of San Jose and the Bay Area Air Quality Management District (BAAQMD) were also invited; and after a brief presentation by Senior Engineer Darryl Wong, public testimony would be taken and the matters discussed by the Council.

Principal Civil Engineer Darryl Wong reported this public hearing was in response to a Council request to provide background on the odor issue within the City and briefly covered the following four items: Odor Regulatory Agencies within the area that are purview over the City; the Newby Island Compost facility history; an overview on the map showing the potential odor site locationS relative to Milpitas, and the recommendations to receive testimony on odor incidents and concerns and request all odor-generating sources and enforcement agencies to prepare a comprehensive action plan for a solution to odor incidents generated by any source. Mr. Wong commented that both the regulatory agencies and the potential odor generators were represented in the audience and were available to answer questions.

City Manager Wilson recognized the organizations represented in the audience inviting the representatives of the Bay Area Air Quality Management District, Browning Ferris Industries, Calpine Corp., Cargill Salt Ponds, Integrated Waste Management Board, Local Enforcement Agency/City of San Jose, Zanker Road Landfill, and Water Pollution Control Plan to stand. Mr. Wilson expressed appreciation for the participation of all the agencies. Mayor Esteves added his appreciation to the representatives of the different agencies for being present stating that he took it as a sign of their commitment, participation, involvement, and help for the people of Milpitas.

Mayor Esteves opened the public hearing but before inviting comments, the Mayor asked the Council its preference on the request to increase speakers' time limit to three minutes.

Vice Mayor Dixon asked for a show of hands as to how many people were present to comment on this item. Vice Mayor Dixon said she thought three minutes was justified and because she was the one who brought this forward, asked to share a little bit of dialogue before getting into the public comment. Vice Mayor Dixon commented that she was born in the Bay Area and Milpitas has had a long history of being connected with various odors, whether it be from a charcoal factory, farms, or rotting vegetables; since she moved here to raise her family in 1973, the oder has gotten out of control; in particular it's been getting worse over the past several years; it used to be that when you complained, you were told it only lasts 14 days; it's getting to the point that it's only 14 days when you don't smell it in some part of the community; and for the first time ever residents on the Berryessa border are

starting to smell it, so it's gone beyond the Milpitas border. Vice Mayor Dixon further stated she brought it forward but didn't want to point fingers at any one particular agency; she was gratified that all the agencies have come together because all we want to do as a city is to make it go away, identify it and come up with some type of strategy because it was starting to affect the economic viability of the community and businesses.

MOTION to increase the public comment time to three minutes for this particular issue.

M/S: Dixon, Polanski. Ayes: 5

Mayor Esteves announced that speakers would be allowed three minutes or less and their input was appreciated because it would help towards working for a resolution to have a better Milpitas. Mayor Esteves invited public comments.

David Richerson said he lives roughly one block down the hill on Yosemite Drive from Piedmont Road, close to the hills and the cow pastures, and can hear the cows at night; the only thing he should be smelling on a warm night was possibly the cows; however, he didn't smell the cows but was smelling what everyone is smelling at the northwest end of Milpitas – what people shopping at McCarthy Ranch smell. Mr. Richerson said he wasn't going to point the finger at any one particular agency but urged the agencies that do have some control over their emissions, as far as when they are released, to do it; if they've got compost windrows that need to be turned as part of the process, use the windsock and only turn it when the winds are heading out towards the Bay. Mr. Richerson commented that it was disheartening to hear the official acknowledgment that the use of the windsock was actually abandoned after that facility was relocated a mile. Mr. Richerson also commented that this didn't just impact Milpitas but also people coming from all around the Bay Area driving through on the freeways; it needs to be taken care of; it was long over due; and commented on a development plan a number of years ago for the west side of McCarthy Ranch that, unfortunately, ended up getting squashed by a threat of a lawsuit from the city of San Jose threatening that the Environmental Impact Report was in error because there was odor.

Matthew O'Brien said he'd been a resident for 20 years on Sepulveda Avenue, his backyard is on Piedmont Road against the hills, and he would divide his remarks into two parts; the first was reading in the Post and hearing tonight from the Vice Mayor – and congratulated her and the Council for addressing this important issue which, he just happened to raise earlier last week with Councilman Gomez. Mr. O'Brien further stated it was a very large embarrassment to the City and commented on a family reunion last summer with 50 family members and all of them commented on the smell. Mr. O'Brien said he really welcomed the fact that the Council was looking into this and was confident that if the Council turns their minds and actions to it, we can work with those parties to get this fixed. Mr. O'Brien said in the second part of his comments, he would point the fingers a little and shared his experiences as a bird watcher spending a large amount of time down by the San Francisco Bay in the area of the Don Edwards National Wildlife Refuge; he didn't think the problem was emanating from the Cargill Salt Pond, he was familiar with the smell of the sewage treatment plant but felt it generally was not a sewage treatment plant problem, but he believed it was the BFI facilities and looking at a map and looking at the prevailing wind and where his house is, it was obvious to him where the problem rises.

Joe McCarthy, McCarthy Ranch, said he thought he was kind of an expert on the odor situation as he had gone through the gamut from corporate campuses not wanting to locate here because of that, to upset retail tenants, to friends coming out, to employees that live on the Ranch in Milpitas immediately adjacent to two of the sources. Mr. McCarthy further stated his office is right on the Coyote Creek directly across from the Treatment Plant, which he considered to be the biggest source; during the summer when the sewage treatment plant actually harvests its sludge ponds, it creates the odor; the composting facility was very distinct with more of a sweet kind of smell where you can see that the compost is being turned and either chopped up or the compost piles rotated. Mr. McCarthy commended the Council for finally getting on this problem, he thought the people creating the odors were responsible for

mitigating it; when BFI was trying to put its compost out there against Milpitas' wishes, he remembered representatives of BFI saying if there was an odor problem, they would take care of it. Mr. McCarthy said he hoped something would come out of this meeting, as it would help all areas.

Steve Soriano thanked the Council for addressing this issue and said he has lived in the Sunnyhills area for 20 years, and the odor issue has been an on-going item; as a member of the City's Recycling Committee for many years, the composting facility and the efforts put forth by BFI were promoted; when it comes to identifying odor issues, it was really tricky and hoped that some kind of timely identification mechanism could be put into effect because there were so many entities involved. Mr. Soriano thanked all of the folks that showed up tonight and commented that the odor issues come and go quickly and there needs to be some kind of mechanism to identify them.

William Smith said he's been a resident for 19 years and the odor problem has gotten worse every year; the only solution he saw was to remove the source, everyone knew what the problem was, where the odors were emanating from, and it wouldn't be cured by bandaids.

Ola Hassan said he was not a resident but did own a business in Milpitas; he had walked in Milpitas for the past 12-15 years, he used to walk at Quantum Corporation and every evening the odor would vary or it would vary during the day and come from different directions; eventually he got used to it until he opened a restaurant in downtown Milpitas; people come from all parts of the State to his restaurant and when they stand outside, everybody complains about the odor that comes irrationally, you don't know when to expect it. Mr. Hassan commented that he was used to it, many people are used to it, but he has to constantly explain it to his clientele; it was really bad some days; it needed to be controlled the same way noise pollution within the aircraft area is controlled – by going out and measuring it. Mr. Hassan also suggested that maybe the time of the processing needs to be changed or businesses and homes compensated where this waste is being processed.

Paul Hay, a resident for 21 years, said he recalled 1993 very well, he lived in the Manor area and he and a number of his neighbors actively tried to mitigate the offensive odors from San Jose's composting facility; they dealt with BAAQMD at that time; this problem has been ongoing and somewhere along the line there was a change in the oversight of the composting facility. Mr. Hay commented on the legislation that took the oversight responsibility from BAAQMD and gave it to the sponsoring agencies – in this case the city of San Jose; ever since then, when an issue of odor has come up and BAAQMD is called, you get referred, if it's believed to be composting, to the city of San Jose and the city of San Jose says if it's an odor problem, to call the BAAQMD. Mr. Hay said he appreciated the Council taking the political posture to deal with this; he thought Milpitas residents either weren't aware of BAAQMD or were unaware that the city of San Jose was the enforcing agency; many of them call the City of Milpitas; he hoped that some plan would be developed that would allow the residents to contact Milpitas and, hopefully, they'll be able to get some response from the operators. Mr. Hay asked that the Council consider the following steps: 1) in the near term, do what you are doing tonight and that is to motivate the oversight agencies and the operators to collectively deal with the odor problem that's impacting Milpitas; 2) if it's not resolved, and he believed the problem was the composting, to take legal action against the city of San Jose to get them to enforce the oversight responsibilities that they now have; and 3) he'd like to see the city of San Jose go to their State Legislators and ask them to initiate legislation to put oversight responsibility back in the hands of the BAAQMD.

Wei She Sun said she agreed with Mr. Hay; she came to the meeting totally unprepared but wanted to share some of the stories she had. Ms. Sun explained how she bought a house in February, she absolutely hated the odor, and she asked her husband every day when were they going to sell the house, which was a crazy idea, but she just could not stand it any more. Ms. Sun said she did not dare to have a house-warming party because people would ask what was the smell. Ms. Sun further stated she wanted to see some improvements, some actions taken

or something implemented, she was happy the Council was taking this into consideration and, hopefully, she would not have to sell her house in the near future.

Marilyn Starr said she was with the Milpitas Christian School, they have a preschool located on Abbott Avenue, they relocated in 1997, and that was the first thing they noticed when the children went out to play – a putrid smell. Ms. Starr said she was asking on behalf of the future generation and thanked the Council for bringing this before the public and for all the agencies coming together to come up with a resolution of how to take care of this situation.

Kirit Patel said he lives near the Dixon Landing area, was a 15 year resident but moved to Dixon Landing a year ago; he knew the problem was there but wasn't aware that it was this bad; and he, too, got concerned when he brought friends to his home and had to watch the temperature, which he thought was a key indicator because when the temperature goes above 85 degrees, the smell would be everywhere. Mr. Patel also expressed concern for kids playing on the playground at Curtner School and breathing the smelly air. Mr. Patel said he had two choices – to come here and talk to everybody and make them aware of what the problem is or he could move out of Milpitas; people moving out of Milpitas was not the solution and as one gentleman mentioned, you really have to remove the root of the problem because it was not going to be fixed by banding it.

Don Egbert said he has lived in Milpitas at the same location since 1968 and he and his wife put together a letter and a poem his wife wrote that had been given to the Council; they wished to express that Milpitas cooperate with the Environmental Protection Agency, which also incorporates private research; the problem has been here a long, long time; when they first moved here, they blamed it on the drying of apricot seeds making charcoal briquettes and when that industry moved away, somebody else replaced it. Mr. Egbert said the compromise should not be such that we dole our responsibility to somebody else, it's here in Milpitas, we need to get on it and report to the students what we're doing so we know what we can do; it was not a pleasant odor and most every afternoon about 3:00 p.m. the winds come up and the smell is there.

Sandy Hagen said she has lived in Milpitas 28 ½ years at the same address on Maple and the odor has been here all that time; she learned to live with it, except it has gotten worse the last couple of years; she also worked at Curtner School for over 25 years and the smell comes any time of the day; this morning at 11:30 a.m. she was out and the odor was a sweet smell with an underlying odor of manure. Ms. Hagen further stated she thought it might mean more than one spot was giving out the odors but wanted to let the Council know it's gotten worse the last couple of years.

Susan Moranz said she lived down the street from Curtner School for six years and worked in toxicology before she became a nurse and wanted to know if any body had done any air pollution studies to see what it's doing to us; it was a real serious problem; when her grandson comes over, he sits and plays outside holding his nose; that was no way for kids to grow up around here; and thought it was a serious problem and needs to be addressed.

Ed Connor said he lives very close to Dixon Landing and said he attended a tech seminar about two months ago and a question came up in Mountain View about a company over there putting out toxic fumes and by the wind direction, they flow directly over to Milpitas. Mr. Connor further stated you're approaching odor and he was approaching odorless and toxins, which also should be included. Mr. Connor also commented on the catalytic converters in the automobiles today and the exhaust off of automobiles. Mr. Connor commented that Newby Island will be closing in about 20 years so that part would be gone but the power generating plant would still be there and wondered if the EPA was concerned about what comes off the smoke stacks at the power plant.

Richard Fetter said he has lived in Milpitas about 25 years and thought it was time for no more Mr. Nice Guy; the city of San Jose was causing this problem; suggested taking the gloves off and San Jose was either going to be a good neighbor or we should get the City Attorney to go

down there and put about a $200 million bill in front of them because you've got to take the gloves off with these guys. Mr. Fetter told BAAQMD to go home because they didn't have any power; and he wanted some action.

Steve Pham said he didn't have anything new to add to what everybody else said; he lived off Milpitas Blvd and like many people, he lived in the direct line of that smell that come every other day or more as far back as he can remember; he appreciated all of the different organization that were present but he got the feeling they were all just gathering here to pat each other on the back or something and there really wasn't anything that was going to be done because history had showed that we've tried many many times. Mr. Pham further stated that most people who live in Milpitas smell it; he really would like to be part of his city but it is the butt of all jokes at his work and with his friends, so he thought it was time that something be done instead of just making a resolution that never gets to go anywhere.

Diane McDonough said she managed a hotel in Milpitas, the hotel industry brings in a lot of TOT taxes to the City, when it affects their guests and the people coming to the area for travel and tourism, which she would like to see built up in the area, it was a very big concern. Ms. McDonough further stated she would like to see the City work with San Jose and others to hopefully clear it up.

A man said he recently moved to Milpitas and applauded Vice Mayor Dixon for bringing this up; he hadn't intended to speak but after hearing everybody speak, he felt he needed to say something; this has been a problem that has been ongoing; he lived in San Jose and heard all the jokes and couldn't help but feel as though he was being placated by an apathetic group; he was not trying to sound rude or anything like that but what the gentleman said, that somebody's gloves need to come off, was the bottom line because what's going to eventually happen is that all of the property values were going to drop and once the property values drop, people cannot sell their houses.

Ric Concepcion said his family had resided in Milpitas for about 18 years and he was offended, and hoped his fellow citizens of Milpitas would be offended also when they call our City "Smellpitas"; he didn't want Milpitas called the armpit of San Jose or Fremont; and he hoped the representatives here, the emanaters, will be sincerely ashamed as to what they emanate and will do something about it.

Eric Tran said he lives on the Milpitas/ San Jose border near Piedmont Road and every morning as he walks out his door and drives to school he can smell the odor; he agreed with the gentleman that spoke abut the bandage solution; thought it should be attacked with dedication because it shouldn't be covered up and we shouldn't have this problem over and over again.

Isaac Hughes said he thought what really needed to be done was to put these people, that the City was willing to place on the list of potential odor sources, on the location map, which the Council was privy to and most of the audience wasn't; he thought they should really come up and speak first and after they make excuses for what they say is not a problem caused by them, then we should go after them with our questions, not give them time as we ask questions for them to do what they've always done in years past and make excuses. Mr. Hughes said he wanted to know, since it was obvious the odor was coming from somewhere, which one of the representatives was going to say they were doing it; he wanted to see which one of the professional, well-paid individuals was man enough or woman enough to say their company was responsible.

Mayor Esteves reiterated the Council's gratitude to everybody for being present, he considered it a partnership working together to find a solution, it was a serious issue and could even be a public health issue and a quality of life issue as well, and he was sure the different agencies were present to help and at least offer their services or offer a plan.

MOTION to close the public hearing.

M/S: Dixon, Livengood. Ayes: 5

Vice Mayor Dixon said she appreciated the chronological history Mr. Wong presented and asked if he had any background information about the composting facility and Almaden Valley in San Jose where the residents put up quite a fight and all of a sudden the city of San Jose did away with it. Mr. Wong said he didn't have that history but it was a compost facility and it was his understanding in Almaden Valley it was for treating green waste. Vice Mayor Dixon asked if a representative from San Jose would have that information.

Jamie Matthews, Administrator for Code Enforcement, responded the issue was in 1993/94 and what occurred was that there was a very large stock pile of compost material that had not been processed that was causing the terrible odor, the reason was both equipment and process oriented, and they did step in and resolve that issue. Vice Mayor Dixon ask if it was still there. Mr. Matthews responded yes, the facility is there and continuing to operate. Vice Mayor Dixon asked if there were complaints coming from that facility. Mr. Matthews said occasionally. Bill Jones, BFI, also responded to questions from Vice Mayor Dixon regarding the composting facility.

Vice Mayor Dixon said she was curious about comments in the Post from Mr. Gans, the General Manager of the Recyclery, that the Recyclery officials used to be more attentive to wind patterns and other conditions when turning the piles when the facility was closer to the Milpitas border but now he doesn't think it needs as much monitoring. Mr. Jones said he thought Mr. Gans was misquoted, they still have the windsock that was referred to by somebody earlier, and they do everything they can to not turn the wind rows or do any of that kind of activity that could potentially release odors when the windsocks are pointing in.

Vice Mayor Dixon asked Mr. Jones if he thought the odor was emanating from that facility. Mr. Jones said he thought there were odors that do emanate from that facility but he didn't know if that was *"the odor"* that everyone was talking about; he believed the best solution would be to set up a system where when the calls come in, they come to the City rather than having BAAQMD and multiple jurisdictions involved – having the information tallied instantly and sent to them as well as the other generators so that can look at their operations and start to figure out what may be the root cause of those odors.

Councilmember Livengood said to Mr. Jones that you have permits that you operate under in the city of San Jose and they are responsible for coming out and overseeing those permits and making sure you are complying with all the regulations in those permits and asked Mr. Jones if he would have a problem allowing the City of Milpitas to have that same opportunity to come and whether be Milpitas staff or a third party that Milpitas designates, to come and oversee those same issues. Mr. Jones said he was not sure he could do that legally in terms of how the regulators work but in the past they have worked very closely with Milpitas staff and they have access to their information.

Mayor Esteves asked how the San Jose Enforcement Agency knows that the air quality or odor is violated or is not healthy? Jamie Matthews responded said they did have a study that was commissioned that has some results regarding the quality of the air and whether or not the odors themselves caused an unhealthy affect rather than just nuisance odors, and he would be happy to share a copy of the report.

Mayor Esteves asked what would Mr. Matthews really do that would provide a solution, this problem has been going on for years, whatever was being done was not doing anything, and the reason this was on the agenda was to search for a more permanent solution. Mr. Matthews said he appreciated the passion and the longevity of the problem and if they weren't interested in seeking some sort of resolution, then they would not be here; they were not under the jurisdiction of the Milpitas City Council so they were here on their own time to try to be helpful. Mr. Matthews said the regulations have changed, they did not ask for the regulations to change, but now they were charged with this, and only specifically for compost, and they

would be happy to partner at the table to try to identify solutions that can be self-sustainable. Mayor Esteves said Mr. Matthews was right, his approach was that you will soon be working here as a partner, but he was just trying to find out what's going on and where we are right now and was not singling out anybody right now because nobody was in a position to do that.

Councilmember Polanski thanked the agencies for coming and being here and the residents and business people for coming and expressing their concerns; she appreciated Vice Mayor Dixon putting this on the agenda, and thought that each one of the Council had experienced what the various members of the audience had experienced. Councilmember Polanski commented on the September 11th event at City Hall at 7:00 p.m. and the smell outside during the ceremony and said she didn't know where the smell was coming from, but she did know where it was not coming from – it was not coming from Milpitas. Councilmember Polanski said one of the problems was that we're not able to regulate this, one option would be to sue, but she wanted to see how we can work together to solve this problem mutually as quickly as possible because she thought we all want to be good neighbors so that everyone in this area is living in a quality area.

Councilmember Gomez thanked everyone for coming tonight, said he has lived in Milpitas since he was five and clearly knew there is an odor problem; walking along Coyote Creek was pretty bad, especially along the Dixon Landing area, and he sympathized with anyone living in that area; he lives in Parktown and it wasn't as bad there but they don't necessarily get the brunt of it. Councilmember Gomez inquired of BAAQMD if they thought this was going to be an enforcement issue or a good neighbor issue and did they find violations in the past.

Kelly Wee, Director of Enforcement, responded of all the complaints they received from the Milpitas area, about 40% of them tended to be related to the garbage facilities, either the landfill operation or composting and described how they investigate odor complaints.

Councilmember Livengood commented that obviously this has been a long time problem, the issue was mired in bureaucracy and hampered by very weak regulation; from his perspective, if progress was going to be made, it was going to have to be on a lot of different fronts and one of those fronts was going to include making sure that the State legislature gives us the mechanisms which are necessary to make changes when these issues come up, and right now those mechanisms were not in place. Councilmember Livengood said he has lived in Milpitas since 1963; the odor problem has been here since he's been here, he thought all these facilities stink at one time or another, and they all emanate odors. Councilmember Livengood further stated he thought the first step was to get our hands around where these issues are coming from and how often they are cropping up; that could be done by getting our staff more hooked into the agencies that are involved and making sure they are privy to all the information that everybody else is privy to and get over the potential legal issues with who has access to this information; the second step is to make contact with our State legislators and tell them they're not doing their job; they have to give us better enforcement tools to use. Councilmember Livengood thanked Vice Mayor Dixon and the Council for taking this issue head on and saying they want results and he appreciated everybody's comments and everybody's coming down here and making their positions known, including those people who are part of this issue.

Mayor Esteves commented that the agencies were present because they were really willing to help and work with us and be a partner; the staff recommendation expected everyone to work together to prepare some kind of a comprehensive action plan that would not only mitigate but pose a more permanent solution to the problem, and inquired if anybody had a problem with that action plan.

Carl Mosher, Department of Environmental Services, the operator of the San Jose/Santa Clara Water Pollution Control Plant, said they thought the recommendation related to the comprehensive action plan was exactly what needed to happen and suggested that it be facilitated or coordinated by a member of the Milpitas staff so the action plan comes together as one document rather than each agency putting a piece together and then bringing it to the

Council. Mayor Esteves commented that was the intent – Milpitas will be the coordinating body and Milpitas staff will work with each of the agencies.

MOTION to request all odor generating sources and enforcement agencies to prepare a Comprehensive Action Plan for a solution to odor incidents generated by any source, and that Milpitas staff coordinate all those efforts with a report back to the Council and the public in 30 days, even if nothing has been accomplished, but to at least provide a status report in 30 days.

M/S: Dixon, Polanski.

City Manager Wilson said staff would take that charge, it was going to be a multi-diverse efforts within our staff, and we will put that facilitation together for the effort and then report through that team to the Council on a regular basis, with the first one no later than 30 days.

Councilmember Livengood said he wanted to make sure inherent in the motion was the understanding that we are the coordinating agency, that Milpitas staff will be given access to this information just as if they were the Local Enforcement Agency or whoever wanted access to it. Vice Mayor Dixon responded absolutely and apart from this motion, there could be a parallel action to discuss this issue with our legislative branch in Sacramento.

VOTE ON MOTION: Ayes: 5

Mayor Esteves again expressed appreciation to everybody, to the public for coming and providing their input and to the different agencies for their cooperation.

RECESS

Mayor Esteves recessed the City Council meeting at 9:19 p.m. The City Council meeting reconvened at 9:28 p.m.

3.
Variance
Hillside Residence

Acting Planning Manager James Lindsay reviewed the request for a variance to exceed the Hillside impervious surface coverage requirement and an 'S' Zone approval-amendment to allow accessory structures for 510 Vista Spring Court in the Spring Valley Heights development. Mr. Lindsay reported in 1988, the Council approved the single-family home including a 21 ft. shared driveway and emergency vehicle turn-around with the adjacent parcel; recently the applicant constructed a variety of backyard amenities without benefit of permits; the improvements constructed prior to 1992 are legally nonconforming as they exceed the hillside ordinance impervious surface limits; and with the amenities added in 2000, the site is now in violation of the impervious surface coverage limits. Mr. Lindsay said the applicant was requesting a variance to take into consideration the shared nature of the driveway and to exclude half of the driveway width from the impervious surface area calculation; if those areas were deducted, the applicant would need to remove approximately 190 sq. ft. of recently constructed amenities in the backyard. Mr. Lindsay further stated that staff supported the justification for the variance but disagreed with the amount of impervious surface area deduction requested; if the shared driveway didn't exist, then a 14 ft. driveway would have been built to access the site and the staff approach would necessitate the removal of approximately half, or 1,012 sq. ft. of the recently constructed amenities on the site. Mr. Lindsay reported the Planning Commission reviewed this request on September 10, 2003, and recommended approval of the variance according to the staff's approach. Mr. Lindsay noted the applicant was in the audience and would like an opportunity to address the Council.

Vice Mayor Dixon commented that as the Chair of the Planning Commission and one of the authors of the Hillside Ordinance, the reason the majority voted to state it that way was to give it as much flexibility as possible and that was how the formula of a percentage of the entire parcel as to how much you could build out came about. Vice Mayor Dixon further commented that when they looked at decks, they didn't want to be punitive to someone who built a smaller home but wanted an extension of their home to be a deck – not on the ground but up above (like a balcony or second story or even a raised deck); the issue came about because of what was considered impervious on the ground. Vice Mayor Dixon recalled that the discussion came about as to what type of deck, which didn't matter to her; what mattered

to her was the overall percentage they would be allowed to build as a part of their house; and by the time it went to the Council in 1994, they were looking at it and the true sense of it as being restrictive versus not as restrictive. Vice Mayor Dixon asked as far as amenities in the backyard, was it known what they would have to remove because 1,000 sq. ft. was somewhat substantial. Mr. Lindsay responded it really would be up to the applicant.

Mayor Esteves commented that to him, the main issue on the driveway appeared to be how much to deduct; staff was deducting only 32%; the applicant was saying 50%; he tended to agree with the applicant because it was a joint driveway and should be 50/50; and questioned why staff was deducting only 32% of the driveway instead of 50%. Councilmember Livengood said he also would like to hear the staff rationale for the 32% versus the 50%. Mr. Lindsay responded the purpose in granting a variance was to try to bring the site into conformance as closely as possible and explained by the 14 ft., staff made the assumption if the shared driveway didn't exist, what would be expected; when granting a variance, the objective was to minimize the amount of the variance or exception being given; the 14 ft. was giving that minimum step and staff felt going with 50% wasn't justified in the ordinance and wasn't taking that general philosophy of granting a minimum exception.

Vice Mayor Dixon inquired if a variance had ever been granted for anything similar to this request. Mr. Lindsay responded two similar variances had been granted – in 1996 and 2000; in 2000, a situation on Quince Lane was similar with 3000 sq. ft. of impervious surface area associated with a City easement and a neighbor's driveway and that was deducted; in that case, the driveway was not shared but was exclusive; in 1996, a driveway on Evans Road served four properties and was deducted to take into consideration the shared driveway.

Vice Mayor Dixon asked if there was a formula or was it more subjective. Mr. Lindsay responded staff didn't want it to be subjective, staff wanted something it could go back and quantify, the minimum width of a driveway for a home would be 14 ft. so that would be the minimum variance request staff could support.

Vice Mayor Dixon commented that if the deck was looked at as part of the house, it would make this go away. Mr. Lindsay responded the raised decking was 440 sq. ft. and if that was taken out of the equation, based on staff's recommended approach, 1,012 sq. ft. would have to be removed; if the wood decking was not considered part of that, the 440 sq. ft would be taken away but 570 sq. ft. would still need to be removed.

Vice Mayor Dixon commented that if the percentage of the road was raised from 32% to 50%, it would go away. Mr. Lindsay agreed – 190 sq. ft. minus 440 – it would not be an issue.

Vice Mayor Dixon said they knew this would happen and that was why they gave the flexibility to the Council with the variance; she didn't recall the other situations being as similar with the shared driveway, so that in itself makes this unique; the deck, because that was an area they debated whether it be a part of the house, their only concern was that some people would build their house to the maximum size and then have the ability to put a deck all around; and her preference was to grant the variance.

Mayor Esteves opened the public hearing and invited comments.

Celina Camillo, the applicant, said she was representing her family and her husband was in the audience. Ms. Camillo presented a brief history of the property stating that they moved in the house in 1995 when there was just the house and driveway; five years later they added the amenities; apologized for her ignorance stating that when her neighbors told her after the fact that she was in violation of some ordinances, she tried to find out and tried to meet with the proper officials to help her understand the ordinance. Ms. Camillo further stated she worked with staff, had to put together geologic and soils reports, which she didn't understand, so she sought the help of a friend to put together an application for the variance. Ms. Camillo said she was not asking for too much; she just wanted to maintain the amenities she has provided

and remove whatever she should to go to the 9,583 sq. ft of her limit. Ms. Camillo commented that technical questions could be answered by her friend Don Peeples.

Don Peeples commented that this was his first opportunity to address the Council as a Civil Engineer but he was also the Camillo's neighbor; when Mrs. Camillo came to talk to him, he told her he was a supporter of the Hillside Ordinance and didn't have a lot of sympathy for people who want to over build. Mr. Peeples proceeded to review the applicant's request stating that the size of the house and the original deck area were 3.2% of the total 2.2 acre lot; looking at the improvements they installed and everything they want to keep was a another 2.9%; the house and everything exclusive of the driveway was only 6%; and the driveway by itself makes up 9% of the total site. Mr. Peeples commented on the purpose of the impervious surface requirement and the purpose for the variance process. Mr. Peeples showed a drawing of the site and commented that the people who designed this community did it before the Hillside Ordinance; they didn't consider the implementation but it was easy to remedy; if the street was designed today, it would be extended and none of the pavement would go towards counting the impervious surface area. Mr. Peeples said he felt it was a design issue, the people who designed it did consider restoring and keeping the natural habitat and they did that by adding a considerable amount of green space to this development. Mr. Peeples further stated they thought it satisfies the intent of the Hillside Ordinance and felt the Council should accept the unique nature of this site, the geologic conditions and the hydrologic conditions, the driveway and the access and allow them to keep what they have plus their future swimming pool.

David Richerson stated that to him, a variance was something you apply for before you do something – not after you do something; when they purchased this property, it was a legal conforming property; and it became illegal when they built without permits, planning, or approval. Mr. Richerson said he felt you either need to fix the problem or find some place on the property where you can restore. Mr. Richerson reminded the Council of an item brought before the Planning Commission on another hillside property that used a particular type of driveway material that is pervious and allows the water to pass through as a solution; by using that type of material, they should be able to get what they want; and granting a variance was not an answer because none of the topography changed after they bought the property.

Paul Hay, Planning Commissioner, said when this came before the Commission, the Commission had intense discussions; he thought there was an inconsistency in the way staff was interpreting the deck; an attached deck with slots so the water can drain is considered pervious; what we have is a deck not attached to the house but it is raised above the ground, it has slats, and the water can drain and yet it is considered impervious. Mr. Hay further stated he believed that should be considered the same as the deck around the house and that will help them; however, he believed the inconsistencies that exist were inconsistencies in the staff interpretations and not in the ordinance itself.

MOTION to close the public hearing.

M/S: Livengood, Polanski. Ayes: 5

Vice Mayor Dixon offered a MOTION to approve the variance and 'S' Zone Amendment looking at raising the 32% of the driveway to 50% and considering the 440 sq. ft. of decking as part of the house (pervious). Vice Mayor Dixon asked for clarification that the deck would be considered pervious or impervious. Mr. Lindsay responded the wood deck was not connected to the house; if the intent was to not count the wood decking in the impervious calculation, that could be made part of the motion that the total impervious surface area not include the wood decking. Councilmember Livengood seconded the motion.

City Attorney Steve Mattas noted that staff had prepared written findings and special conditions based on the staff recommendation and advised the Council that the motion should provide direction to staff to come back with appropriate findings and special conditions at the next meeting.

MOTION to direct staff to prepare appropriate findings and special conditions to approve (using 50% of the driveway and not including the wood decking in the impervious calculations) Variance No. P-VA2003-2 and the 'S' Zone Amendment P-SA2003-61 at the next Council meeting (on the consent calendar).

M/S: Dixon, Livengood. 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 10:19 p.m.

RA2.
ROLL CALL

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

RA3.
MINUTES

MOTION to approve the Redevelopment Agency minutes of September 16, 2003, including joint meeting with the City Council, as submitted.

M/S: Gomez, Dixon. Ayes: 5

RA4.
AGENDA

MOTION to approve the agenda and consent calendar as submitted.

M/S: Dixon, Gomez. Ayes: 5

***RA7.**
CIVIC CENTER PROJECT

1. Approved change order ($19,229) and purchase orders ($9,250) included in the summary sheet; and

2. Noted receipt and filed progress report on 3rd and 4th floor improvements.

RA5.
URGENCY ORD. NO. 192.15
AMENDING RDA PLAN

Assistant City Manager Blair King reported that in connection with the approval of the State budget for Fiscal Year 2003-04, the State adopted SB 1045 requiring redevelopment agencies statewide to transfer a total of $135 million into the Education Revenue Augmentation Fund (ERAF) but also allowing redevelopment agencies to extend the time limit of plans by one year without complying with other provisions of State law concerning amendments to redevelopment plans. Mr. King further reported that staff was asking the Council to adopt this provision as an Urgency Ordinance which would allow the City to incorporate this timeline into the 2003 Tax Allocation Bonds which would improve the structure of the bonds.

MOTION to introduce and adopt Urgency Ordinance No. 192.15 of the City of Milpitas amending certain time limitations with respect to the amended and restated Redevelopment Plan for the Milpitas Redevelopment Project No. 1.

M/S: Dixon, Polanski.

City Attorney Steve Mattas, for the record, asked if the motion also included waiving the reading beyond the title. Vice Mayor Dixon, the maker of the motion, responded yes.

VOTE ON MOTION: Ayes: 5

RA6.
LIBRARY PROJECT

Acting Assistant City Engineer Greg Armendariz presented a brief update on the Library Project and reviewed the agreement with Harris & Associates to provide aerial mapping, survey and engineering services for the project. Mr. Armendariz also reviewed the request for a budget transfer of $300,000 for the consulting services ($200,000) and staff administration ($100,000).

MOTION to:

1. Approve a budget transfer of $200,000 from the JPA Grant (Milpitas Library Pre-design Study Project No. 3394) and $100,000 from the 2003 RDA Bond Proceeds, to the new CIP Project – Milpitas Library Mapping, Survey and Off-site Utility Relocation; and

2. Authorize the City Manager to execute an agreement with Harris & Associates for aerial mapping, survey and engineering services for the Milpitas Library project, based on time and materials, not-to-exceed $200,000, subject to approval as to form by the City Attorney.

M/S: Dixon, Gomez. Ayes: 5

RA8.
2003 BOND ISSUE UPDATE

City Manager Thomas Wilson presented a brief update on the recent trip to New York City by the City Manager, Assistant City Manager, Finance Director, and Vice Mayor Dixon to secure assistance from the rating agencies and insurers of the 2003 Bond Refunding. Mr. Wilson reported the trip was very successful, the bond team made five presentations, and preliminary word regarding the ratings was expected tomorrow. Mr. Wilson noted that one of the insurers visited Milpitas today and very favorable responses were received from them; the team expected an "A" rating that would help bring the $8 million cost (of issuance, insurance, and underwriter's discount) down under $6 million; the final documents would be brought to the Council on October 21; and the entire transaction will be at market by the middle of November.

Mayor Esteves thanked staff and Vice Mayor Dixon for devoting the time for the trip. The Mayor noted he had some questions regarding the $8 million cost of issuance but staff was able to provide him with a detailed breakdown, which he thought might be helpful to the rest of the Council. City Manager Wilson said that was an excellent idea and would provide the information to all of the Council.

Vice Mayor Dixon said she was very impressed with the work that was put into the presentations, she felt the City's best efforts were presented to the insurers, and they were very concerned about California.

MOTION to note receipt and file.

M/S: Gomez, Livengood. Ayes: 5

RA9.
ADJOURNMENT

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 10:36 p.m.

The City Council meeting continued.

REPORTS OF OFFICERS & BOARDS

4.
Statewide Ballot Initiative

Mayor Esteves commented that everyone was aware of what was going on at the State level, he thought it was important to reinforce the need to pursue different strategies to achieve local government fiscal stability and tax relief, and the Association of Bay Area Governments (ABAG), to which he was the City's representative, was supporting a ballot measure to protect local revenues and limit State takeaways from local governments sponsored by the League of California Cities and the California State Association of Counties. Mayor Esteves said he and Vice Mayor Dixon were asking the Council to adopt a resolution supporting this important strategy.

Vice Mayor Dixon said this was something that was addressed when she was in Sacramento, a group from the League of California Cities put together a measure called "Leave Our Community Assets Local (LOCAL)", this was the first time so many elected officials were actually looking at the economy as it is and the political face right now in Sacramento as the time to strike with the first initiative that will go to the people; this was the first time cities have sought Constitutional protection for local revenues; it was proposed to be on the ballot in

March, and she and the Mayor were looking for Council support as many other cities in California were doing.

Councilmember Polanski commented that after attending the League meeting and hearing from colleagues around the State, she thought this was something they were all supportive of and she supported the Mayor and Vice Mayor in adopting a resolution.

MOTION to adopt Resolution No. 7349 supporting a Statewide Ballot Initiative to require voter approval before the State Government may confiscate local tax funds and direct the City Clerk to send copies to the League of California Cities, the California State Association of Counties, and the Association of Bay Area Governments.

M/S: Polanski, Esteves. Ayes: 5

NEW BUSINESS

6.
Rooftop Equipment Screening Waiver
Ola's Corner Restaurant

Acting Planning Director Tambri Heyden reviewed the request of Ola Hassan, Ola's Corner Restaurant, 167 S. Main Street, for a waiver of the rooftop screen requirement due to the bulkiness of a roof screen in relation to the roof size and the lack of the existing roof's ability to support such a large screening structure. Mr. Heyden presented a history of the site and reported that a temporary certificate of occupancy was issued in March that was conditioned on screening the equipment on the rooftop. Ms. Heyden reported there were two pieces of equipment on the roof; several months ago the applicant installed some framing to give staff some idea of how big the roof screening would have to be to meet Building and Fire Codes; and given the size of the roof screen that would be needed and the impact on this cultural resource and the difference in how that building would look, staff was recommending the roof screening be waived and the equipment be painted to match the roof material. Ms. Heyden noted that the request was presented to the Parks, Recreation, and Cultural Resources Commission on September 8, 2003, was reviewed by the Planning Commission on September 24, 2003, and both Commissions recommended approval of the waiver. Ms. Heyden said staff was recommending approval of the waiver based on the Findings and Special Conditions included in the Council's agenda packets. Ms. Heyden pointed out one change to Special Condition No. 2 made today by the Planning Commission Subcommittee in reviewing the revised landscape plan; the condition should read "prior to the expiration of the temporary Certificate of Occupancy (October 18, 2003), the applicant shall obtain Planning Commission Subcommittee approval of a revised landscaping plan and install as per the Subcommittee's decision."

Councilmember Polanski, as a founding member of the Milpitas Historical Society, said it caused her great distress when Campbell's Corner disappeared, she had no problem with the screening because the equipment was huge, and inquired what guarantees were there that the landscaping would be done because some other things had not occurred as they should have in the past. Ms. Heyden responded it was a condition of the temporary occupancy permit and if the conditions weren't satisfied by October 18, the business could be shut down. Ms. Heyden noted that Mr. Hassan was close to complying with the conditions.

Councilmember Polanski asked Mr. Hassan to give her some assurance that the conditions would be met. Mr. Hassan said before he gave any type of assurance, he needed to make a speech. Mr. Hassan commented on some of the requirements of the temporary occupancy permit noting that one still lingering was paying of the fees; he had not seen any type of business in this valley such as his under such scrutiny; this was costing him a lot of money and he felt attention needed to be paid to the small businesses because they play a major role in the development of any city and the days of big business were gone; thanked the Mayor for setting up the Economic Development Commission; wanted the Council to use this medium to investigate the issues he confronted with Campbell's Corners because he felt it would help in moving forward with the progress the City is experiencing; when he bought Campbell's Corners, he agreed to a lot of things to satisfy a City department and it cost him a lot of money; this was all documented and why he wanted the Council to use its power to set up an

investigation of how to deal with this type of situation in the future; he would not have gotten the temporary occupancy permit without putting in the sidewalk that cost him $27,000; there were so many types of fees brought on to him by the City when he was under construction; he made a request to the Clerk for the Council to help him with all of these encumbrances so he could come and plead his case.

Councilmember Polanski said her question was would the special conditions in here for this temporary occupancy be completed by the 18th.

Mr. Hassan said an occupancy permits wouldn't be issued without paying the fees and the other condition would be done. Councilmember Polanski said that was her only question, Mr. Hassan had been a good small business neighbor down there but as a long-time resident, she was dismayed when a historical site was destroyed. Mr. Hassan disagreed saying it was not destroyed. Councilmember Polanski further stated she appreciated what Mr. Hassan had accomplished, agreed the screening did not look good up there, but wanted to insure that the special conditions would be met. Mr. Hassan said it would be met but part of the conditions were the fees that he was bringing forward. Councilmember Polanski asked staff whether or not the seven conditions would be conformed to by the end of the temporary occupancy. Ms. Heyden responded the seven conditions were not the full extent that was required with the temporary occupancy; it also covered the landscaping, and the fees Mr. Hassan was referring to needed to be paid but that issue was not before the Council tonight. City Manager Wilson added that the fees would have to be paid in order for Mr. Hassan to receive an occupancy permit. Ms. Heyden said what was before the Council tonight was the roof top screening, the fees were not a part of the item tonight but were agreed to by Mr. Hassan and the City back in March.

Isaac Hughes said, with all due respect, Councilmember Polanski didn't own that corner; it belonged to a private businessman; he grew up in this town and walked down that street thousands of times; the previous Council allowed for destruction of the Cozy Corner, the Fat Boy Bar-b-cue, and the DeVries Home; Calvary Assembly Church gave the City the historical Adobe and nothing has been done to it; there were certain situations that define certain levels of landmark appreciation and certain signs can be placed there and when that is the case, once you allow him to go beyond that definition of what needs to be maintained for that to be defined as a historical property, you then cross the boundary where you can come back and claim that he violated certain things that you are complaining about; and complained about violations by Dr. Brown at his property along Railroad Avenue.

Councilmember Livengood inquired about the fee issue, asking where it was part of this agenda item. Mayor Esteves clarified it was not on the agenda. Councilmember Livengood referred to condition 5 regarding fees. Ms. Heyden responded that condition related to the project job account; the fee in question was a Fire Department fee levied by the Fire Department several years ago to secure the building when the property was unsafe and the City had to enter the property and board it up. Ms. Heyden stated the occupancy permit was not before the Council tonight, only the screening of the roof top equipment. Councilmember Livengood referred to the list of special conditions and asked for clarification.

City Attorney Mattas clarified that the issue of the Fire inspection fee was not before the Council; the item on the agenda was the request to waive the roof screening requirement; the recommended action included the conditions of approval, one of which was number 6 that referred to the project job account, which was a mechanism by which costs incurred by the City are recovered; and the specific issue Mr. Hassan was raising was not before the Council.

Councilmember Livengood expressed confusion because there were all kinds of things included in the conditions. Ms. Heyden explained this was technically an 'S' Zone amendment application which goes to the Planning Commission and stops at the Planning Commission level; just that piece of the 'S' Zone amendment application was before the Council.

Councilmember Livengood said it was very confusing and asked for confirmation that the money issue was not before the Council because that also stays at the Planning Commission level. Ms. Heyden responded the fee was a staff issue; it was part of a temporary occupancy agreement that was executed almost six months ago.

Mr. Hassan said he didn't owe any PJ account, it was paid up; the only money in question was part of getting the temporary occupancy; he wrote a letter that this issue be brought to the City Council for waiver of this fee almost two months ago, that was the issue he wanted before the Council before the temporary permit expired, and the fee was $4,500.

City Attorney Mattas advised Mr. Hassan that the fee was not on the agenda and the Council could not take action on that issue tonight; if there was a desire on the part of the Council to ask for a report from staff at some time in the future, that could be placed on a future agenda.

Mr. Hassan expressed concern that the temporary permit would expire and he would have to cease operation by October 18. Mr. Mattas said the Council couldn't give that direction this evening; if Mr. Hassan wanted to close out the fees and make a request that the Council reconsider any form of reimbursement for any fee paid, he could make that request and the Council could ask that it come back to them.

Councilmember Gomez said he would like a report explaining all this.

MOTION to approve the waiver of the rooftop equipment screening requirement ('S' Zone Amendment No. P-SA2003-111) based on the Findings and Special Conditions included in the Council's agenda packet.

M/S: Gomez, Polanski.

Councilmember Livengood asked for clarification that the Council would deal with the issue of the $4,500, Mr. Hassan would have to pay it, and the Council would deal with the issue of giving it back at the next meeting. It was Council consensus that it would come back at the next meeting.

VOTE ON MOTION: Ayes: 5

Mayor Esteves requested staff to provide a report about the fee issue, what the Council can do, and what Mr. Hassan would like to request from the City. Councilmember Livengood said he would like it on the agenda.

City Manager Wilson said staff would provide a report before that; if the Council chooses, it could be put on the agenda, and Mr. Hassan will have to make the payment to receive his occupancy permit. Councilmember Livengood said he would like it on the next agenda. Mr. Wilson said staff would put it on the agenda and get a report to the Council.

ORDINANCES

8.
Ordinance No. 43.199
Traffic Code

Traffic Engineer Arlene DeLeon reviewed the ordinance amending the Traffic Code to provide for traffic control revisions and updates including revisions to posted speed limits for radar enforcement at various locations, adding Beresford Court to the City's speed survey list enabling the use of radar enforcement, adding several marked crosswalks near schools, and removing "no parking" restrictions on the west side of Barber Lane from Bellew Drive to 360 feet southerly.

Traffic Engineer DeLeon read the title of Ordinance No. 43.199 amending Chapter 100, Title V (Traffic) of the Milpitas Municipal Code.

MOTION to waive the reading beyond the title.

M/S: Livengood, Gomez. Ayes: 5

MOTION to introduce Ordinance No. 43.199.

M/S: Livengood, Polanski. Ayes: 5

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 11:05 p.m. in memory of Jon Minnis, Pastor M. Esteves Sr., and Joanna Chen.

Gail Blalock, CMC
City Clerk