

DRAFT MINUTES*
SUNNYVALE CITY COUNCIL
TUESDAY, MAY 15, 2012, 7 PM

CALL TO ORDER

Mayor Spitaleri called the meeting to order in the Council Chambers.

SALUTE TO THE FLAG

Mayor Spitaleri led the salute to the flag.

ROLL CALL

PRESENT:

Mayor Anthony (Tony) Spitaleri
Vice Mayor David Whittum
Councilmember Christopher Moylan
Councilmember Jim Griffith
Councilmember Pat Meyering
Councilmember Tara Martin-Milius
Councilmember Jim Davis

ABSENT:

None.

STAFF PRESENT:

City Manager Gary Luebbers
Assistant City Manager Robert Walker
City Attorney David Kahn
Director of Finance Grace Leung
Chief of Public Safety Frank Grgurina
Director of Community Development Hanson Hom
Director of Public Works Kent Steffens
Director of Human Resources Teri Silva
City Clerk Kathleen Franco Simmons

SPECIAL ORDER OF THE DAY – Mayor Spitaleri presented Department of Public Safety Special Awards.

SPECIAL ORDER OF THE DAY – Mayor Spitaleri presented a proclamation in Recognition of Foster Care Appreciation Month.

PUBLIC ANNOUNCEMENTS

Councilmember Davis announced the upcoming “*Hands on the Arts*” event and the Family Bike Ride event at Ponderosa Elementary School.

Trudi Ryan announced an upcoming Fremont High School Band Boosters’ Book Sale fundraiser.

Margaret Okuzumi, Officer of the Democratic Club of Sunnyvale, announced an upcoming meeting of the Club.

Monica Schwenke, Silicon Valley Bicycle Coalition, announced the upcoming Family Fun Bike Ride event at Ponderosa Park.

Mayor Spitaleri announced that Item 3 regarding the appeal of the decision of the Planning Commission denying a use permit to allow a large family daycare within 300 feet of another large family daycare located at 1372 Cordilleras Avenue has been pulled and will not be heard tonight.

CONSENT CALENDAR

Councilmember Meyering pulled Items 1.C, 1.G, 1.H, and Councilmember Davis pulled Items 1.E and 1.F from the Consent Calendar.

MOTION: Vice Mayor Whittum moved and Councilmember Griffith seconded the motion to approve the Consent Calendar, with the exception of Items 1.C, 1.E, 1.F, 1.G and 1.H.

VOTE: 7 - 0

- 1.A. MOTION Approval of Council Meeting Minutes of May 8, 2012
- 1.B. MOTION Approval of Information/Action Items – Council Directions to Staff

Fiscal Items

- 1.C. MOTION List of Claims and Bills Approved for Payment by the City Manager – List
RTC 12-121 No. 606

Councilmember Meyering requested his explanation of dissent be recorded in the minutes. Meyering stated he has asked for copies of legal bills and his requests have been refused.

MOTION: Vice Mayor Whittum moved and Councilmember Griffith seconded the motion to approve the review the list of bills.

VOTE: 6 - 1 (Councilmember Meyering dissented)

- 1.D. MOTION Fleet Services Budget Increase of \$120,000 Due to Increased
RTC 12-119 Operational Costs in Fiscal Year 2011/2012 and Approval of Budget
Modification No. 34

Staff Recommendation: Alternative 1: Approve Budget Modification No. 34 in the amount of \$120,000 to increase the operating budget for Program 763 Provision of Vehicles and Motorized Equipment.

- 1.E. MOTION Approval of Budget Modification No. 36 to Appropriate \$250,000 of Park
RTC 12-126 Dedication Funds For Outside Counsel Services

MOTION: Councilmember Davis moved and Councilmember Meyering seconded the motion to send this item back to the City Manager for further review. Councilmember Davis restated the motion to decline the use of park dedication fees and ask the City Manager to review the matter and come back with an additional report.

FRIENDLY AMENDMENT: Vice Mayor Whittum offered a friendly amendment to clarify the motion as Alternative 2, to not approve Budget Modification No. 36. Councilmember Davis accepted the clarification, as long as the City Manager will move forward with the litigation and try to find other funding for it.

VOTE: 4 - 3 (Councilmember Griffith, Moylan, Martin-Milius dissented)
Motion carried.

Personnel Items

- 1.F. RESOLUTION Amendment to the Salary Resolution and Classification Plan to Add the
RTC 12-123 Newly-Established Classifications of Fire Prevention Specialist I/II; Public
Safety Specialist; and Animal Control Officer

MOTION: Councilmember Davis moved and Vice Mayor Whittum seconded the motion to approve Alternative 1: Adopt resolutions to amend the City's Classification Plan and Salary Resolution to include the newly-established classifications of Fire Prevention Specialist I/II; Public Safety Specialist; and Animal Control Officer.

VOTE: 7 - 0

Other Items

- 1.G. MOTION Recommendation to Sunnyvale City Council to Approve Confirmation of
RTC 12-114 New Members to the NOVA Workforce Board

Councilmember Meyering requested his explanation of dissent be recorded in the minutes. Meyering stated that the first individual recommended for appointment to the NOVA Workforce Board is a director at the Apollo Group, University of Phoenix and he believes there is a significant difference in the reputation that has been built by NOVA versus the reputation that has been built by University of Phoenix and creates potential conflicts of interest.

MOTION: Councilmember Griffith moved and Councilmember Martin-Milius seconded the motion to approve Alternative 1: Confirm Ms. Amber Grewal, Ms. Kimberly Nichols and Mr. Andy Switky to the NOVA Workforce Board

VOTE: 6 - 1 (Councilmember Meyering dissented)

- 1.H. MOTION Approval of Final Map (Tract No. 10085) - One Hundred Thirty-Two
RTC 12-117 Residential Condominium Unit Development at 1044 East Duane
Avenue by Taylor Morrison of California LLC

MOTION: Vice Mayor Whittum moved and Councilmember Griffith seconded the motion to approve the Final Map for Tract No. 10085; authorize the Mayor to sign the subdivision agreement; direct the City Clerk to sign the City Clerk's Statement and forward the final map for recordation.

VOTE: 6 - 1 (Councilmember Meyering dissented)

- 1.I. MOTION Ratification of Mayor's Intergovernmental Appointment to U.S
RTC 12-118 Conference of Mayors' Standing Committees

Staff Recommendation: Alternative 1: Ratify the appointment of Mayor Spitaleri to two U.S. Conference of Mayors Standing Committees: Jobs, Education and the Workforce; and International Affairs.

- 1.J. MOTION Proposed Revisions to Council Travel Budgets Section of Council Policy
RTC 12-120 7.3.13 Support for Councilmembers; Staff-Council Communications

Staff Recommendation: Alternative 1: Approve the policy revisions.

- 1.K. ORDINANCE Adoption of Ordinance No. 2971-12 Awarding Nonexclusive Franchise
2971-12 to Jasraj Bhatia (FKA Bikram Singh), Owner of California Cab Company

Staff Recommendation: Council approve the second reading of Ordinance No. 2971-12

PUBLIC COMMENTS

None.

PUBLIC HEARINGS/GENERAL BUSINESS

2. MOTION 2011-7719 Appeal of a decision of the Planning Commission approving
RTC 12-124 with conditions a Special Development Permit to allow live entertainment
(amplified acoustic music) at Da Kine Café located at 153 E. Fremont
Avenue.

Planning Officer Trudi Ryan presented the staff report.

Applicant Peter Be Jr., Managing Director of Da Kine Café, submitted petitions and letters in support of live entertainment at Da Kine Café. He provided information regarding the Island style of Hawaiian cuisine, music and environment of the café, reports of complaints about noise level, and standard operational procedures for the staff during entertainment.

Public hearing opened at 8:27 p.m.

Alyssa Holguin, employee at the café, spoke regarding the respect with which the employees and customers are treated and spoke in favor of the entertainment permit.

Erlinda Estrada, spoke in support of approval of the entertainment permit.
Sean O'Keefe, spoke regarding events in which the restaurant provided support for the community and encouraged approval of the permit.

Rick Kitson, member of the Fremont High School Site Council, spoke in favor of the Planning Commission decision and the staff recommendation to uphold the permit.

Rod Arii, musician, stated bass is not a concern with Hawaiian music and stated the restaurant gives musicians and young people a chance to perform.

Raymond Loaec spoke regarding non-Hawaiian music he has heard playing, and crowd noise in the parking lot late at night.

Applicant Peter Be Jr. responded to additional questions.

Public hearing closed at 8:44 p.m.

MOTION: Councilmember Davis moved and Vice Mayor Whittum seconded the motion to approve Alternative 2: Grant the appeal and approve the Special Development Permit with the modification to require closing hours of 10 p.m.

MOTION RESTATED: Vice Mayor Whittum clarified that the motion is to grant the appeal and uphold the decision of the Planning Commission to approve the Special Development Permit with conditions, listed in attachment B, adding new Condition of Approval PC-2 regarding signage listing the maximum occupancy and modifying Condition of Approval AT-6 to clarify the participatory entertainment (e.g. karaoke, patron dancing) is not permitted, but modify in Attachment B page 4, Condition AT-1, hours of operation from 1 a.m. to 10 p.m. and in part b) where it says midnight, to 10 p.m.
Councilmember Davis confirmed the motion as restated.

AMENDMENT: Councilmember Moylan moved an amendment and Councilmember Griffith seconded the motion to change the time from 10 p.m. as stated in the motion or 1 a.m. as stated in the staff report to midnight. Councilmember Moylan added that flexibility should be given to close at 9 p.m. rather than 8 p.m. on the other days.

VOTE on AMENDMENT: 4 - 3 (Councilmembers Meyering, Whittum and Davis dissented)
Motion carried.

FRIENDLY AMENDMENT: Councilmember Griffith offered a friendly amendment to add a one-year review.
Following staff response, Councilmember Griffith withdrew the friendly amendment.

VOTE on MAIN MOTION: 4 - 3 (Councilmembers Meyering, Whittum and Davis dissented)
Motion carried.

3. MOTION 2012-7045 Appeal of a decision of the Planning Commission denying a
RTC 12-125 Use Permit to allow a large family day care within 300 feet of another
 large family day care located at 1372 Cordilleras Avenue.

This item was pulled prior to the meeting and was not heard at this time.

4. MOTION Taxicabs: Franchises, Regulation and Enforcement (Study Issue)
RTC 12-122

Chief of Public Safety Frank J. Grgurina presented the staff report.

Public hearing opened at 9:12 p.m.

Speakers:

Julia Miller stated she was representing six companies and requested a delay of a vote on this item, but to allow the cab company owners to address the Council at this meeting to express their concerns. She spoke in support of extending the business fee from two to four years.

Jasraj Bhatia, owner of California Cab and Yellow Cab Peninsula in Sunnyvale, suggested looking at other cities such as San Francisco which have fines for illegal pick-ups as high as \$7500 and the car is impounded for 30 days. He spoke regarding the necessity for having clear language in the ordinance such as placing the responsibility on a cab company if it fails to meet the requirements, or on the driver when the driver has had a violation. He expressed concerns regarding the recommendation for drivers to keep daily log sheets; the company uses computer dispatching and has detailed logs.

Varinder Kumar spoke regarding the responsibility of the driver to provide receipts and suggested it might not be enforceable. As a driver for Classic Cab, Kumar suggested the permit fees should be reduced if they drive less than a year or increase the permit to two or four years.

Amrajit Singh, co-owner of Silicon Valley Cab, recommended looking at what the surrounding cities are doing before adding extra requirements and stated the requirement for drivers to keep call log sheets would be an extra requirement. He spoke in favor of having on-line payment of permit fees and extending the permit to four years like Palo Alto.

Haris Khan, driver for Silicon Valley Cab, spoke regarding the seventh option, to limit a driver who has a violation from reapplying for a permit for two years and recommended three to six months. He expressed concerns regarding the requirement for drivers to keep call logs.

Lashkar Singh, co-owner Silicon Valley Cab, expressed concerns regarding the time allowed to pay the franchise fee and recommended an extension of that time. He spoke in support of pro-rating the drivers permit and extending the time period that a permit can be held when a driver is gone before they can return.

Public hearing closed at 9:41 p.m.

MOTION: Councilmember Moylan moved and Councilmember Griffith seconded the motion to approve Alternative 1: Direct staff to draft an ordinance to amend SMC Chapter 5.36 with the recommended changes and implement new fees as recommended by DPS.

VOTE: 7 – 0

MOTION: Councilmember Moylan moved and Councilmember Meyering seconded the motion to approve Alternative 2: Place Charter Amendment on next general election ballot allowing taxicab franchises to be awarded administratively.

VOTE: 2 – 5 (Councilmembers Griffith, Whittum, Spitaleri, Martin-Milius and Davis dissented)
Motion failed.

5. Consideration of Change in Terms for Housing & Human Services and Bicycle and Pedestrian Advisory Commissions, and Potential Changes to Council Voting Process for Commissioner Appointments

Councilmember Griffith presented the report.

Public hearing opened at 10:09 p.m.

No speakers.

Public hearing closed at 10:09 p.m.

MOTION: Councilmember Griffith moved and Councilmember Martin-Milius seconded the Council Subcommittee recommendations Alternatives 1, 3, and 5, adding the specification that 1.b. involves one class 1 and one class 2, 1.a. involves one class one, which may become irrelevant if the Subcommittee comes back prior to 2014:

1. Stagger the terms for the Housing and Human Services and the Bicycle and Pedestrian Advisory Commissions to match the staggering that exists for other commissions, disregarding incumbency, by altering terms as follows:
 - a. Reduce one 2012 BPAC terms from 4 years to 3 years
 - b. Reduce two 2014 BPAC terms from 4 years to 3 years
 - c. Reduce one 2012 H&HS term from 4 years to 2 years
 - d. Reduce two 2013 H&HS terms from 4 years to 2 years
3. Direct staff to notify current applicants for the H&HS and BPAC commissions that they may be appointed to shorter initial terms of service, prior to the May 22 appointment votes.
5. Modify council policy as indicated in Attachment C to permit a ranked-choice paper voting method similar to the existing study issues voting method, at the discretion of the mayor.

VOTE: 6 - 1 (Councilmember Meyering dissented)

MOTION: Councilmember Moylan moved and Councilmember Griffith seconded the motion to refer to the Subcommittee consideration of merging the types of seats on the BPAC.

VOTE: 7 - 0

COUNCILMEMBER REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE ASSIGNMENTS

Councilmember Davis reported on a meeting of the Valley Transportation Authority Policy Advisory Committee.

Councilmember Davis reported on a meeting of the Moffett Field Restoration Advisory Committee and recommended a letter or meeting regarding NASA Administrator Boldon's letter talking about the excessing of the Moffett Property and Hangar One.

Vice Mayor Whittum recommended a study session concerning the letter as soon as possible.

Councilmember Meyering left the meeting at 10:20 p.m.

NON-AGENDA ITEMS & COMMENTS

Councilmember Moylan reported after the study session on El Camino Bus Rapid Transit, several Sustainability Commissioners requested to meet on this subject to make a recommendation to Council prior to Council action.

City Attorney Kahn provided farewell remarks on this, his last meeting with the City.

Councilmembers Whittum, Griffith, Davis, Martin-Milius, Moylan and Spitaleri expressed appreciation to City Attorney Kahn for his service and wished him well in the future.

INFORMATION ONLY REPORTS/ITEMS

- Tentative Council Meeting Agenda Calendar

ADJOURNMENT

Mayor Spitaleri adjourned the meeting at 10:30 p.m.