

**APPROVED MINUTES  
SUNNYVALE CITY COUNCIL MEETING  
TUESDAY, MARCH 18, 2008**

**6 P.M. SPECIAL COUNCIL MEETING (Closed Session)** - Conference with Labor Negotiators pursuant to Government Code 54987.6. Negotiator: Erwin Young, Director of Human Resources. Employee Organizations: Sunnyvale Employees Association (SEA), Service Employees International Union (SEIU) Local 715 (part-time employees), and Sunnyvale Management Association (Management employees)

**7 P.M. REGULAR MEETING**

**(Video tape was not recording during this portion of the meeting. The following section was hand recorded by the City Clerk during the meeting)**

**SALUTE TO THE FLAG**

Mayor Spitaleri led the salute to the flag.

**ROLL CALL**

**PRESENT:**

Mayor Anthony Spitaleri  
Vice Mayor Melinda Hamilton  
Councilmember John Howe  
Councilmember Otto Lee  
Councilmember Ron Swegles  
Councilmember Christopher Moylan  
Councilmember David Whittum

**ABSENT:**

None

**STAFF PRESENT:**

City Manager Amy Chan  
Assistant City Manager Robert Walker  
City Attorney David Kahn  
Director of Community Development Hanson Hom  
Director of Information Technology Cuong Nguyen  
Director of Public Works Marvin Rose  
Affordable Housing Manager, Ernie DeFrenchi  
Superintendent of Parks Curtis Black  
Administrative Analyst Maria Rodriguez  
Transportation and Traffic Manager Jack Witthaus  
Senior Assistant City Attorney Kathryn Berry  
Principal Planner Gerri Caruso  
Director of Human Resources Erwin Young  
City Clerk Gail Borkowski

**CLOSED SESSION REPORT FOR MARCH 18, 2008**

Vice Mayor Hamilton reported that Council met in Closed Session earlier this evening pertaining to: Conference with Labor Negotiators pursuant to Government Code 54987.6. Negotiator: Erwin Young, Director of Human Resources. Employee Organizations: Sunnyvale Employees Association

(SEA), Service Employees International Union (SEIU) Local 715 (part-time employees), and Sunnyvale Management Association (Management employees)

Vice Mayor Hamilton reported direction was given but no action was taken.

## **PUBLIC ANNOUNCEMENTS**

**(None recorded)**

## **CONSENT CALENDAR**

Councilmember Whittum pulled Items 1.G, 1.L, and 1.M.

Vice Mayor Hamilton moved and Councilmember Howe seconded to approve the Consent Calendar with the exception of Items 1.G, 1.L, and 1.M.

**VOTE: 7-0**

- 1.A. MOTION Approval of Revised Draft Minutes of January 25, 2008**
- 1.B. MOTION Approval of Draft Minutes of March 4, 2008**
- 1.C. MOTION Approval of Information/Action Items – Council Directions to Staff**

## **Fiscal Items**

- 1.D. RTC 08–080 List of Claims and Bills Approved for Payment by the City Manager – Lists No. 391 & 392**

Staff Recommendation: Council reviews the attached list of bills.

- 1.E. RTC 08–067 Performance Audit Work Plans for FY 2008/2009 and FY 2009/2010**

Staff Recommendation: Council adopts the performance audit work plan to audit 20 programs in FY 2008/09 and FY 2009/10.

- 1.F. RTC 08–074 Notice of Intent to Apply for, Accept, and Appropriate a Grant of \$48,473.70 from the California Environmental Protection Agency to Implement the Aboveground Petroleum Storage Tank Act and Budget Modification No. 37**

Staff Recommendation:

- Council authorizes staff to apply for the CalEPA Environmental Protection Trust Fund grant monies in the amount of \$48,473.70; and
- Council approves Budget Modification No. 37, if the grant is awarded, and appropriates monies to a special project for implementation of the APSA.

- 1.G. RTC 08–078 Appropriate Funds from the City’s Housing Fund to Support Housing Program Activities for the Remainder of FY 2007/2008 and Budget Modification No. 38**

**(Video tape recording of meeting began during a portion of this section).**

A discussion ensued between Councilmember Whittum and staff.

Public hearing opened at 7:16 p.m.

No speakers.

Public hearing closed at 7:16 p.m.

MOTION: Vice Mayor Hamilton moved and Councilmember Lee moved to approve Alternative 1: Council approves Budget Modification No. 38 to appropriate \$35,000 from the Housing Fund/Below Market Rate (BMR) Housing Sub-fund to support contract services which provide homebuyer educational programs to assist qualified BMR applicants to obtain BMR Housing.

VOTE: 7-0

### **Contract Items**

**1.H.     RTC 08–072     Award of Contract for the Maintenance of the City’s Telephone System (F0702-70)**

Staff Recommendation: Council awards a three-year contract in an amount not to exceed \$244,841 to Avaya Communication for the maintenance of the City’s telephone system, including voice mail.

**1.I.     RTC 08–075     Award of Bid No. F0712-54 for One Aerial Forestry Service Truck**

Staff Recommendation: Council awards a contract to Altec Industries, in substantially the same form as the attached draft purchase order and in an amount not to exceed \$129,867, for one aerial Forestry Service Truck utilizing a standard diesel engine.

**1.J.     RTC 08–073     Authorization to Modify an Existing Contract for Janitorial Supplies (F0702-71)**

Staff Recommendation: Council modifies an existing contract with Clean Source for the purchase of janitorial supplies, in substantially the same form as the attached draft change order, by increasing total authorized expenditures to \$80,000.

**1.K.     RTC 08–081     Award of Bid F0710-48 for Application of Slurry Seal on City Streets**

Staff Recommendation: Council awards a contract, in substantially the same form as the attached draft and in the amount of \$.0895 per square foot for a total estimated cost of \$216,569 to Valley Slurry Seal Company, for the application of slurry seal on streets throughout Sunnyvale; and including the base plus alternate streets.

**1.L.     RTC 08–076     Lease between the City of Sunnyvale and T-Mobile USA Incorporated, of Ground Space and Space on Light Standard at Ortega Park**

Councilmember Whittum inquired what the competitive rate is for rental of City property for

commercial uses and also asked why rate increases are capped at 8 percent.

Director of Information Technology Cuong Nguyen explained that a survey was done three to four years ago and the rental rate of \$1,900 was determined to be a fair monthly rental fee. Director of Information Technology Nguyen stated he was not part of the negotiations during which the 8 percent cap was instituted; therefore, he is not able to respond on that matter.

Public hearing opened at 7:19 p.m.

Dave Hu requested Council delay voting on this item for 90 days in order that the possibility of an underground equipment vault may be fully explored. Hu explained that an underground vault will not have an impact on Ortega park. Hu stated the neighborhood would like the opportunity to speak with the Planning Commission and City Council about the possibility of reopening this issue in order to consider requiring an underground vault as a condition of approval.

Hu stated he has concerns that the lease rate for this site is not at the market rate. Hu stated he conducted a brief survey of the local area and found that the minimum lease rate is \$2,500 a month. Hu stated that currently when a lease renews, there is no opportunity for the City to renegotiate the lease rate. Hu recommended the lease be rewritten so that at each renewal, the City has the opportunity to review the lease rate and increase it if necessary. Hu stated the lease rates should be based on market values.

Councilmember Howe inquired if the permit has already been approved. Director of Information Technology Nguyen confirmed the permit has been approved and the current discussion on this item involves the lease rate. Councilmember Howe confirmed with Director of Community Development Hanson Hom that since the permit was approved, Council would not be able to require that the equipment be placed underground.

Councilmember Howe inquired what Hu believes the lease rate should be and Hu stated the City should take review of the surrounding lease rates and compare them to the median home price for the area. Councilmember Howe confirmed Hu is recommending that Council adjust the lease rate based on median home price values.

Director of Information Technology Cuong Nguyen explained that \$2,500 is a premium fee. Director of Information Technology Nguyen stated that the City of Cupertino did charge \$2,500 for a site which was considered to be a premium location in their City; however, their regular fee is \$2,000.

Superintendent of Parks Curtis Black stated one additional consideration when setting a rental fee is whether the entity is providing the power at the site. In the case of Ortega Park, the City has a separate agreement for eight to ten months for an additional \$500 a month (until a separate meter has been obtained) at which time the additional fee will be reduced to \$100 a month ongoing.

Councilmember Lee inquired if Council does not approve the lease, would staff have to go back and renegotiate the contract. City Attorney David Kahn explained that Council does have the authority to approve (or not approve) the lease; however, unless there is a compelling reason, not approving the lease would reflect badly on the City in terms of its negotiation strategies.

Councilmember Whittum inquired what recourse the City has if an electrical generator is found to be running all the time. Superintendent of Parks Black stated the generator mentioned in the lease would be temporary until electrical power was restored.

Larry Alba stated he agrees with the former speaker and requested that Council not sign the lease until it is confirmed that the rate is competitive. Alba inquired whether the lease requires that once electrical power is restored, the generator must be shut down. Mayor Spitaleri explained the generator would be temporary. Alba stated he believes the lease should reflect that all generators are required to be shut off once electrical power is restored.

City Manager Amy Chan stated the lease clearly states that a generator is for emergencies and is temporary.

City Attorney Kahn stated the previous speaker is correct in that the lease does not specifically state that a temporary generator must be shut off once an emergency is over; however, staff's interpretation is that the authorization to run the generator is only during the time of an emergency. If a generator was found to be still running after an emergency ended, the City would then have the right to ask that the generator be shut down.

Public hearing closed at 7:34 p.m.

MOTION: Councilmember Howe moved and Vice Mayor Hamilton seconded to approve staff recommendation: Council approves the proposed lease agreement between the City and T-Mobile, subject to T-Mobile applying for and obtaining all required building safety permits.

VOTE: 5-2 (Councilmembers Lee and Whittum dissented)

**1.M. RTC 08-077 Lease between the City of Sunnyvale and Sprint Spectrum, L.P. of space on Light Standard at Washington Park**

Councilmember Whittum stated he pulled this item for the same reason as previously asked with Item 1.L. Councilmember Whittum stated the questions do not need to be asked again and a motion can be made at this time.

Public hearing at 7:37 p.m.

Larry Alba asked if an analysis will be performed by the City to see if the rent is competitive.

Superintendent of Parks Black stated staff will continue to check the market as each request for this type of lease agreement comes forward in the future. Alba inquired if he could review the market survey that was done for this item. Mayor Spitaleri explained that Alba can make a request to the City for a copy of anything that is available.

Dave Hu stated the information he found on lease rates was all from the end of 2007; therefore, it is very clear the City is under market value. Hu stated the City has a fiscal responsibility to the citizens and Council should not accept the lower lease rate.

Vice Mayor Hamilton confirmed a separate agreement for electrical power is not needed for this site and that this lease will be for a total of \$1,900.

Public hearing closed at 7:40 p.m.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded to approve staff recommendation: Council approves the proposed lease agreement between the City and Sprint, subject to Sprint applying for and obtaining all required building safety permits.

Councilmember Howe stated staff had the City's best interest in mind when negotiating this lease and they used due diligence in their review.

VOTE: 5-2 (Councilmembers Lee and Whittum dissented)

### **Other Items**

- 1.N. ORDINANCE No. 2867-08 Adoption of Ordinance No. 2867-08 to Add Chapter 9.45 (Special Event Permits) and Chapter 9.47 (Extraordinary Public Safety Service Liability) to Title 9 (Public Peace, Safety or Welfare) of the Sunnyvale Municipal Code Pertaining to Special Events**

Staff Recommendation: Council approves the second reading of Ordinance No. 2867-08.

- 1.O. ORDINANCE No. 2868-08 Adoption of Ordinance No. 2868-08 to Amend Sections 2.10.010 (Purpose), 2.10.020 (Designation of Official Newspaper for Publication of Legal Notices), 2.10.030 (Designation of Newspaper for Publication of City Council Agendas and Digests of Actions), and 2.10.040 (Publication of Campaign Contributions) of Chapter 2.10 (Publication of Legal Notices) of Title 2 (Administration and Personnel) of the Sunnyvale Municipal Code Pertaining to Publication of Legal Notices**

Staff Recommendation: Council approves the second reading of Ordinance No. 2868-08.

### **STAFF RESPONSES TO PRIOR PUBLIC COMMENTS**

None.

### **PUBLIC COMMENTS**

Werner Gans thanked Vice Mayor Hamilton for attending the City of Santa Clara's Planning Commission meeting last week. Gans stated the meeting was in regard to the Santa Clara Square and Vice Mayor Hamilton spoke at the meeting in support of downsizing the project.

Gans thanked staff for their in-depth analysis of Santa Clara's final Environmental Impact Report (EIR).

Gans thanked Councilmember Whittum for attending a neighborhood meeting over this project.

Gans expressed concerns over this project.

Nancy Newkirk stated she is one of the first members of the graduating class of the First Five Family Ambassador Program that Council initiated in Sunnyvale. Newkirk spoke about the program and its benefits.

Patrick Meyering spoke about a report issued by the Blind Center and their dealings with the City of Sunnyvale's Housing Division. Meyering stated on March 6, 2006 he met with the mayor (Councilmember Swegles), city manager and Councilmember Howe regarding multiple problems with the Housing Division. Meyering stated in March 2007, the Housing Division urged commissioners to deny residents the right to speak at a public meeting. Meyering stated he brought this to Council's attention.

Meyering requested Council appoint an outside, independent, and objective person to perform an expedited investigation as to exactly what steps are needed to produce a correct and consistent federally funded project agreement so the funds can be used for the most vulnerable citizens of Sunnyvale.

Vice Mayor Hamilton stated it was her understanding that the inconsistencies and inaccuracies were corrected. Director Hom stated staff has been in ongoing negotiations to reach agreement terms for the operating agreement for about \$45,000 of CDBG funds. Community Development Hom stated at this point, staff has not been able to reach the terms of the agreement but staff is working to resolve those at this point.

Vice Mayor Hamilton explained that the last letter she received from the Blind Center stated they were refusing the funds. Director Hom explained that staff asked for alternative language last November from the service provider. Since that time, staff has not received anything back from the service provider other than the recent letter they sent. Staff is not aware that they are refusing funds.

Councilmember Lee confirmed the allocated funds were meant for this fiscal year. Director Hom stated the funds were to be used by the Blind Center for facility improvements to their location in San Jose. Director Hom stated if they can provide the required documentation under the terms of agreement then they will be able to obtain reimbursement. Director Hom stated the City is not able to provide reimbursement until the terms of the agreement are reached and the agreement is executed.

Councilmember Lee confirmed if agreement is not reached, then staff would recommend returning the funds to the CDBG fund and request that the Housing and Human Services Commission make a recommendation for reallocation of the funds to eligible projects.

Councilmember Lee inquired whether the funds would have to be spent this fiscal year since they are federal funds. Director Hom stated overall the City has to meet a spending ratio and these funds are not significant enough to jeopardize being returned to the Housing and Urban Development (HUD) program unless other service provider monies are not expended on a timely basis.

Councilmember Moylan confirmed with Director Hom that there are some inaccuracies in the representation of how the agency was treated. Director Hom stated staff is attempting to meet with the agency to resolve this issue as soon as possible; however, staff has found it difficult to receive a response. Director Hom explained that in November 2007 staff requested language from the agency that they would like staff to consider for the agreement. Councilmember Moylan confirmed with Director Hom that Housing Division staff has dealt with the service providers in a professional

manner. Director Hom stated the service provider has changed some of the language from their original proposal for funding.

Yong Ja Walterskirchen stated she has requested that a sound proof wall be installed between her home property and the new housing project planned for this year. Walterskirchen stated she has been requesting this for some time and spoke of her surgery recovery needs which include a quiet environment and an area free of dust.

## **PUBLIC HEARINGS/GENERAL BUSINESS**

### **2. RTC 08–084 Approval of Downtown Sunnyvale Business Improvement District Annual Report for Fiscal Year 2007/2008 and Adoption of the Resolution of Intention to Reauthorize the Downtown Sunnyvale Business Improvement District for Fiscal Year 2008/2009**

Administrative Analyst Maria Rodriguez presented the staff report.

Public hearing opened at 8:05 p.m.

Joel Wyrick, executive director of the Sunnyvale Downtown Association, stated he was present to answer questions.

Councilmember Whittum confirmed Wyrick supported Alternative 2 as opposed to the staff recommendation (Alternative 1) as it is his opinion that maintenance needs to continue downtown.

Vice Mayor Hamilton explained that the reason Council approved the Downtown Sunnyvale Business Improvement District (BID) was in order for the downtown to become more self-sufficient and she asked Wyrick when he thinks this will happen. Wyrick referred Vice Mayor Hamilton's question to Joe Antuzzi, Downtown Association chairman. Antuzzi stated during the bid process, the association agreed to look at paying for the maintenance, but before the bid was approved, the association stated they would not be able to pay for the street sweeping. Antuzzi stated the association agreed to pay for the twinkle lights. Antuzzi stated currently, the members of the association are not able to afford to pay for any maintenance. Antuzzi stated the association never agreed to pay for street cleaning and in his opinion, he does not ever think they should have to pay for that service.

Vice Mayor Hamilton stated she would like to know what expectations the Council should have for this association. Antuzzi stated the association stated they would look at paying for the street cleaning in the bid process and that was done but the association is not able to afford to take on that expense at this time. Wyrick further explained that as of right now, the association is not able to afford to take on any additional expense. Closure of the Town and Country center has resulted in a decreased revenue stream for the downtown businesses. Wyrick stated as the mall opens revenue should substantially increase and the BID will again look at the possibility of absorbing the cost of street cleaning in addition to considering additional beautification efforts.

Vice Mayor Hamilton stated on page 2 of exhibit b, there is an error for the subtotal "other" as it should state \$11,000 not \$3,000.

Councilmember Swegles inquired if it is mandatory that public safety staff is used for events or may private security be used.

City Manager Chan stated the City prefers that trained Sunnyvale public safety personnel are used; however, if the organization were to provide advance notice of their request for private security, then public safety staff would provide the event organizers with the necessary criteria for outside security. Manager Chan reiterated that for obvious reasons, trained public safety personnel are recommended.

Councilmember Swegles inquired if Wyrick has looked at the cost comparison of using private security over public safety personnel. Wyrick stated the City is not competitive in that other cities charge almost half of what the City charges. Wyrick stated it is hard to compete with other cities in producing events due to the difference in cost of security and this issue is something Wyrick would like to speak to Council about in the future.

City Manager Chan explained that the City's fees are based on a cost recovery system in which the fee charged only covers the cost to provide the service.

Public hearing closed at 8:20 p.m.

Councilmember Lee confirmed that should Council approve this item and continue to cover the cost of downtown maintenance, it will be an approval for one year only.

City Manager Chan clarified that enhanced street cleaning has not been budgeted for future years. Should Council decide to add this service, it would be added to the list of budget requests under the current budgetary process and Council would have an opportunity to weight how high this item would be on the priority list. Currently, staff is in the process of reviewing all of Council's priority items. City Manager Chan explained that should Council approve one of the other alternatives instead of Alternative 1, then the motion would need to specifically identify that Council wants this item to be included in the upcoming year's budget consideration.

**MOTION:** Councilmember Lee moved and Councilmember Swegles seconded to approve Alternative 2: Council approves the Business Improvement District Annual Report for FY 2007/08 and adopts the Resolution of Intention and schedules a public hearing for April 8, 2008 to reauthorize the Business Improvement District for FY 2008/09 for Downtown Sunnyvale.

Councilmember Lee spoke in favor of assisting the downtown merchants for one more year, especially due to the current construction. Councilmember Lee stated having a clean Murphy Street is a high priority to the City. Councilmember Lee stated the success of the BID will weigh out once the construction is over and the merchants will be able to take this expense over.

Councilmember Swegles stated he agreed with Councilmember Lee. Councilmember Swegles suggested Wyrick start working with the developer to identify the new merchants coming in to the area in order that they can contact them now and subsequently increase membership within the association.

Vice Mayor Hamilton inquired if Alternative 2 is approved, would that represent Council's request to add money for downtown maintenance for the fiscal year (FY) 2008/09, but not

beyond that. City Manager Chan stated she did not hear that reference listed in the motion, but Councilmember Lee's comments after his motion identified that his motion was meant to add a budget consideration to fund downtown maintenance only for one more year.

Vice Mayor Hamilton stated she agreed with the motion and Councilmember Lee's comments; however, once the downtown center is open, she cautioned against the association counting on the City funding enhanced street maintenance in the future.

Councilmember Howe offered a friendly amendment to specify in this motion that enhanced cleaning on Murphy Avenue will be budgeted and included in the next fiscal year.

Councilmember Howe offered a friendly amendment that the BID association provide \$100 toward enhanced street cleaning this fiscal year.

Councilmember Howe explained that one of the line items in the BID's budget would be for street cleaning and this fiscal year their fee will be \$100. Councilmember Howe stated it is unreasonable for the City to continue to pay for this maintenance indefinitely, but it is reasonable to assist during the downtown construction period. Councilmember Howe stated his amendment allows for as much street cleaning in the next fiscal year as was done during the current year. Councilmember Howe stated this motion provides direction to staff to continue with the street cleaning but that the BID will be charged \$100.

Friendly amendment accepted.

Vice Mayor Hamilton offered a friendly amendment that the enhanced cleaning services would not be put into the budget; but instead the service would be considered along with all the other budget requests for the upcoming fiscal year.

Mayor Spitaleri stated Vice Mayor's Hamilton's friendly amendment cannot be accepted because it changes the original intent of the motion which was to fund the enhanced maintenance.

Vice Mayor Hamilton stated Councilmember Lee could decide to change his position and not accept Councilmember Howe's friendly amendment.

Vice Mayor Hamilton questioned whether the City is able to require that the BID pay for street sweeping because it is her understanding that the BID is structured in such a way that the City cannot dictate what they do with BID monies. City Attorney Kahn stated without researching the BID, he cannot state for sure but Council could ask the representatives if they would be willing to accept that as a condition. City Attorney Kahn stated if they agree, then that would be legal.

Councilmember Howe requested that the mayor reopen the public hearing in order to ask the representative if they agree to pay \$100 toward street cleaning.

Mayor Spitaleri reopened the public hearing at 8:30 p.m.

Wyrick stated in theory he would support the concept, but he would want to consult with legal counsel. Vice Mayor Hamilton suggested he check with his board and Wyrick agreed

and stated he would also check with their legal counsel.

Mayor Spitaleri closed the public hearing at 8:31 p.m.

Vice Mayor Hamilton restated her friendly amendment to request the enhanced maintenance be a consideration within the upcoming budget process, rather than as a requirement.

Councilmember Howe stated this is a unique situation in that there are currently a number of businesses under stress due to the downtown construction. Councilmember Howe stated approving enhanced maintenance for the next fiscal year will assist the downtown businesses; however, further negotiations will need to occur after this point.

Councilmember Howe stated he would support a change to his friendly amendment from a requirement to an advisory measure stating that the BID pay \$100. Councilmember Howe stressed that his goal is to have the BID board of directors acknowledge that they understand that there will be further negotiations on this issue.

Vice Mayor Hamilton stated although she thinks the street cleaning and \$100 fee are good ideas, she is concerned over the precedent it sets for putting things in the budget outside of the budget process. Vice Mayor Hamilton stated she supports everything about the motion, except the section where the enhanced maintenance expense will be budgeted and not required to go through the budget process.

Councilmember Whittum stated he supports funding this enhanced maintenance right away without delay.

Councilmember Swegles stated this item was approved outside of the budget process last year and this follows the direction given to staff last year.

Restated MOTION: Councilmember Lee moved and Councilmember Swegles seconded to approve Alternative 2: Council approves the Business Improvement District Annual Report for FY 2007/08 and adopts the Resolution of Intention and schedules a public hearing for April 8, 2008 to reauthorize the Business Improvement District for FY 2008/09 for Downtown Sunnyvale.

**with**

- Council directs staff to continue to provide enhanced cleaning services at the same level as this fiscal year, and
- Council requests the BID contribute \$100 toward cleaning services. If the city attorney determines that it is illegal for the BID to make this contribution, this provision shall be dropped.

Vice Mayor Hamilton clarified that Councilmember Howe's direction is to have the enhanced cleaning be at the same service level as last year regardless if the cost has increased per cleaning.

VOTE: 6-1 (Vice Mayor Hamilton dissented)

**3. RTC 08-085 Mathilda Avenue Overhead Bridge Rehabilitation Project  
Environmental Impact Report (as Augmented by EIR Addendum)  
and Project Approval**

Mayor Spitaleri recused himself from this item as his family owns property within 500 feet

of this project.

Vice Mayor Hamilton presided over the meeting.

Councilmember Whittum recused himself from this item as he owns property within 440 feet of this project and in addition he was involved with litigation on this issue. Councilmember Whittum stated because his financial conflict arises from personal property, he will speak to the item as a member of the public, and then at the close of public testimony, he will leave the room.

Transportation and Traffic Manager Jack Witthaus presented the staff report.

Councilmember Howe asked City Attorney Kahn who entered the lawsuit against the City on this project. City Attorney Kahn stated the plaintiff in the California Environmental Quality Act (CEQA) litigation was David Whittum (who was not a Councilmember at the time).

Councilmember Howe inquired if it is correct that a number of items were brought up but the City was found only to be deficient in one small area. Senior Assistant City Attorney Kathryn Berry explained that there were four causes of action and the City prevailed on three, but did not prevail on the construction noise limit issue which is the only item before Council this evening.

Councilmember Howe stated his understanding is that Councilmember Whittum recused himself because he owns property in the area and because he brought the lawsuit against the City forward. Councilmember Howe inquired under what conditions a Councilmember would be able to step down on an item and yet still remain in the chambers and participate as a public member. Councilmember Howe explained that when councilmembers recuse themselves, they normally leave the chambers. City Attorney Kahn explained there are two justifications for Councilmember Whittum to recuse himself. One reason is the proximity of his property to the site and the other is because he was and is the plaintiff in the CEQA litigation. City Attorney Kahn stated because Councilmember Whittum is a participant in this litigation and a member of the public, he is allowed to stay in the chambers for the period of public testimony. Once Council begins deliberations, Councilmember Whittum will be required to leave the room.

Councilmember Moylan confirmed with City Attorney Kahn that generally when councilmembers recuse themselves due to a conflict, the action would be to leave the chambers for both public testimony and deliberations. City Attorney Kahn stated if the recused Councilmember wished to make a comment as a member of the public, they would be allowed to come back into the chambers and make their comments.

Public hearing opened at 8:52 p.m.

David Whittum explained that he is allowed to speak on this item as a member of the public because it is his personal home and not an investment property. Whittum passed out copies of his comments to Council. Whittum stated he is opposed to the staff recommendation because it approves noise levels within the neighborhood that exceed Sunnyvale's general plan guidelines. Whittum shared his suggestions for mitigation efforts for Council's consideration.

Councilmember Moylan inquired as to what basis Whittum is suggesting that Council override the opinion of the city attorney. Whittum stated Council needs to think of the neighbors and how 70 dBA (decibels) will affect those living in the area and their quality of life. Whittum stated the mitigations he is suggesting are quite inexpensive.

Councilmember Moylan asked Whittum that if Council were to ignore the city attorney and approve extra noise mitigation how would he respond to charges of favoritism since he is a councilmember. Whittum stated Council would be open to a charge of complying with the City's general plan. Whittum stated the general plan should be followed for all projects, especially a City-sponsored project.

Councilmember Lee confirmed Whittum's cost estimate for his three proposed mitigation efforts would total between \$10,000 – \$20,000.

City Attorney Kahn explained that one of the mitigation measures included in the addendum to the Environmental Impact Report (EIR) is the appointment of a noise coordinator and the possibility of the City reimbursing hotel costs for seniors or those with medical conditions during the pile driving portion of construction.

Arthur Schwartz stated he supports Whittum's comments. Schwartz stated Council's decision is whether it is in the public interest to override what has been deemed to be a significant impact.

Public hearing closed at 9:11 p.m.

MOTION: Councilmember Moylan moved and Councilmember Howe seconded to approve Alternatives 1 and 3:

Alternative 1: Council adopts the Resolution of Findings including Statement of Overriding Considerations; certifies the Environmental Impact Report as augmented by EIR Addendum, and adopts a revised Mitigation Monitoring and Reporting Program and

Alternative 3: Council approves the project and directs staff to proceed with the Mathilda Overhead Bridge Rehabilitation Project design and construction.

Councilmember Moylan stated unnecessary exposure to the City would be created if Council were to overrule the city attorney's opinion in order to take care of a councilmember's neighborhood. Councilmember Moylan stated regardless of the merits of the claim, the circumstances have pinned Council into a corner. Councilmember Moylan stated he does not deny or dispute the validity of any of the claims, but at this point, Council needs to follow the city attorney's opinion on this legal issue.

City Attorney Kahn explained it is necessary for Council to make the finding that the circumstances which cannot be mitigated are outweighed by the benefits of the project. City Attorney Kahn stated by approving this motion, Council would be approving the findings contained in the resolution and the Statement of Overriding Considerations. Councilmember Moylan agreed that his motion does include the finding that permanent improvement of the bridge overrides the temporary problems that cannot be completely mitigated.

VOTE: 5-0 (Mayor Spitaleri and Councilmember Whittum recused)

**4. RTC 08–083 Dedication of Park Land in East Sunnyvale ITR Neighborhood**

Principal Planner Gerri Caruso presented the staff report.

Councilmember Swegles confirmed the value for one acre of land is approximately \$96 per square foot which equates to approximately \$4 million dollars. Councilmember Swegles confirmed that the City is turning down the equivalent of \$4 million to accept \$2 million in in-lieu fees toward the purchase of a more appropriate piece of land.

Councilmember Swegles confirmed the first step is to complete a land plan and in that plan staff would determine the most appropriate place for a park.

Vice Mayor Hamilton confirmed the applicant offered the City more land than what they were required to dedicate. Vice Mayor Hamilton confirmed the applicant offered a higher value of land than in-lieu fees.

Councilmember Whittum confirmed the last time the City used park dedication fees was in 1999.

Councilmember Whittum inquired if Council could obtain a cost estimate for the clean up that would be necessary in order to make the acre dedicated open space prior to the 14-month time period. Principal Planner Caruso explained there is some risk in accepting this land as some future contaminate could be identified or standard raised after the City had already accepted title to the land.

Public hearing opened at 9:26 p.m.

No speakers.

Public hearing closed 9:26 p.m.

MOTION: Councilmember Whittum moved and Councilmember Moylan seconded to approve Alternative 1: Council accepts the one acre dedicated park land.

Councilmember Whittum stated the City needs park land and it will benefit the neighborhood.

Councilmember Moylan stated this is a win for the City, especially given that the applicant offered more land than they were required to and the City should take this land. Councilmember Moylan spoke of the benefit of a park to those living in the high density housing surrounding this area.

Vice Mayor Hamilton stated she is not in favor of either alternative. Vice Mayor Hamilton expressed concern over current and future hazardous waste associated with this property. Vice Mayor Hamilton stated a five-acre park would have the same maintenance cost as a one-acre park but would be a lot more useable.

Mayor Spitaleri stated he opposes the motion due to the hazardous material and issues related to contamination on this property and the potential liabilities associated with past use of this land. Mayor Spitaleri stated he supports the staff recommendation.

City Attorney Kahn explained that pollution liability insurance policies are available at a cost of 10 to 20 percent of the value of the land. City Attorney Kahn stated staff has been investigating this type of policy which would insure against future clean up and future liability; however, there is no guarantee that the City would be able to obtain such a policy.

Councilmember Swegles spoke in support of the motion.

Mayor Spitaleri inquired if it is the City's intent to purchase insurance for this property if the motion is approved.

Councilmember Howe suggested that Mayor Spitaleri could propose a friendly amendment to postpone this item but stay within the 14-month timeline. Councilmember Howe asked the city attorney to return to Council with what the possibility would be for the City to obtain insurance on this property. Councilmember Howe stated Council would have until April 2008 to make their decision.

City Attorney Kahn explained that if an insurance policy was available for this property, the funds for the policy would have to be a general fund allocation.

Councilmember Moylan stated the motion does not specify that the City must obtain insurance. Councilmember Moylan stated he does not support obtaining insurance due to the expense. Councilmember Moylan stated the City should take the land and take the risk. Councilmember Moylan identified that the City could always sell the land in the future.

VOTE: 5-2 ( Mayor Spitaleri and Councilmember Howe dissented)

Mayor Spitaleri stated it is 9:30 p.m. and asked if Council wished to continue on with the agenda. Mayor Spitaleri received confirmation to proceed with the agenda.

**5. RTC 08-079 Downtown Parking Information System – Study Issue**

Transportation and Traffic Manager Jack Witthaus presented the staff report.

Vice Mayor Hamilton inquired if staff has a timeline for installation of a dynamic parking system. Transportation and Traffic Manager Witthaus stated the City does not have a timeline, but there is an unfunded project for a parking system in the budget.

Vice Mayor Hamilton inquired if this parking technology will be extended to the Town and Country site as well. Director Hom stated this has not been discussed, but the system might not be beneficial for that area. Director Hom stated staff can ask the developer what their parking plans are for the town and country center and return to Council with the response.

Public hearing opened at 9:47 p.m.

Arthur Schwartz spoke in favor of this parking method and promoting this system for the town and country area.

Public hearing closed 9:48 p.m.

MOTION: Vice Mayor Hamilton moved and Councilmember Lee seconded to approve

Alternatives 1 and 2:

Alternative 1: Council accepts the study issue report on Downtown Parking Information Systems

Alternative 2: Council monitors the implementation and use of the Simply Park technology; and Council considers this application for a broader examination of other systems for other areas of the downtown at an indeterminate future date.

VOTE: 7-0

**6. RTC 08-002 Recruitment Process for City Manager/Selection of Executive Recruitment Firm**

Director of Human Resources Erwin Young presented the staff report.

Councilmember Moylan confirmed that Bob Murray, who at the time worked for the recruiting firm DMB, performed the recruitment for the Sunnyvale City Manager in 1997.

Councilmember Moylan confirmed with Mayor Spitaleri that Council will perform their selection by using ranking sheets.

Public hearing opened at 9:52 p.m.

Jim Griffith stated support for Alternative 1. Griffith offered his opinions on the recruitment firms and spoke in support of Alliance Resource Consulting or William Avery.

Public hearing closed at 9:54 p.m.

Mayor Spitaleri requested that Council rank the firms with the number 1 representing their first choice.

MOTION 1: Councilmember Lee moved and Vice Mayor Hamilton seconded to approve Alternative 1: Council selects Alliance Resource Consulting, CPS Executive Search, William Avery & Associates or Bob Murray & Associates to administer the recruitment and selection process for a new city manager.

VOTE: 7-0

**NON-AGENDA ITEMS & COMMENTS**

**COUNCIL:** Councilmember Whittum stated he would like to add a budget item for consideration to Council's ranking process in May. Councilmember Whittum explained that his budget item addresses adding back into the budget tree maintenance which includes the service of spraying for aphid infestation with a budgeted amount of \$30,000.

Councilmember Swegles mentioned Council just returned from a very successful trip to Washington D.C.

Councilmember Swegles stated there will be a public hearing on March 27,

2008 for the Citizens Advisory Council (CAC) to give direction on Onizuka.

Mayor Spitaleri announced he recently attended the children's story-telling event at the library and encouraged citizens to attend or participate in this event.

**STAFF:** None.

**6. (cont.) RTC 08-002 Recruitment Process for City Manager/Selection of Executive Recruitment Firm**

Mayor Spitaleri called for the results of the ranking.

City Clerk Gail Borkowski announced William Avery and Associates received the highest ranking with five Councilmembers ranking it as their number one choice.

Councilmember Howe stated this needs to be a formal motion.

**MOTION:** Councilmember Howe moved and Councilmember Lee seconded to approve hiring William Avery and Associates to conduct the search for the new city manager.

Councilmember Swegles seconded the motion after Councilmember Lee. This second was not recorded.

**VOTE:** 7-0

**INFORMATION ONLY REPORTS/ITEMS**

- Tentative Council Meeting Agenda Calendar
- Approved Minutes of the Housing & Human Services Commission Meeting of December 19, 2007
- Draft Minutes of the Board of Library Trustees Meeting of March 3, 2008
- Draft Minutes of the Heritage Preservation Commission Meeting of March 5, 2008
- Study Session Summary – Presentation by Executive Search Firms Regarding Recruitment Process for New City Manager – March 4, 2008

**ADJOURNMENT**

Mayor Spitaleri adjourned the meeting at 10:01 p.m.

---

Gail T. Borkowski

---

Date