

**APPROVED MINUTES
SUNNYVALE CITY COUNCIL MEETING
TUESDAY, APRIL 1, 2008**

7 P.M. REGULAR 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 Parks and Recreation David Lewis
Director of Human Resources Erwin Young
Director of Employment Development Mike Curran
Assistant Planner Mariya Hodge
Intergovernmental Relations Officer Yvette Agredano
Assistant to the City Manager Coryn Campbell
Public Safety Captain Dave Pitts
Director of Public Safety Don Johnson
City Clerk Gail Borkowski

SPECIAL ORDER OF THE DAY– Airship Ventures Presentation

PUBLIC ANNOUNCEMENTS

Councilmember Swegles announced the City's continuous board and commission recruitment.

Councilmember Swegles announced NASA will be holding an outreach meeting on April 10, 2008, at City Hall.

Councilmember Swegles announced that National Library Week begins on April 13 and the Sunnyvale Library will be hosting special events.

Councilmember Swegles announced the upcoming AARP meeting at the Sunnyvale Senior Center.

Adam Berkan, Chairman of Morse Park Neighborhood Association, announced that the Morse Park residents have formed a new neighborhood association. Berkan explained the association is very supportive of the proposed Morse Park.

Councilmember Swegles explained there are already two parks in the area – Lakewood and Orchard Park by Borregas. Berkan responded that both parks are more than a mile away and that Orchard Park is a small area with most of the greenway measuring only 85 feet wide. Additionally, there is an electronic fence on one side of the park.

Councilmember Howe verified with Berkan that the electronic fence is along the UPS delivery center side of the park. Councilmember Howe asked staff to look into the legality of an electronic fence in the City.

CONSENT CALENDAR

Councilmember Whittum pulled Items 1.D. and 1.E.

Members of the public pulled Items 1.A. and 1.K.

Vice Mayor Hamilton moved and Councilmember Howe seconded to approve the consent calendar with the exception of Items 1.A., 1.D., 1.E. and 1.K.

VOTE: 7-0

1.A. MOTION Approval of Draft Minutes of March 18, 2008

Patrick Meyering stated the contents of the Blind Center report were not included in the March 18, 2008, minutes. Meyering explained the Blind Center was to receive \$45,000 which was to serve very low income blind individuals. Meyering read statements made by the Blind Center regarding City of Sunnyvale and their interactions with the City. Meyering spoke of his past and present concerns with the City, city manager, Housing Division, Council actions and censoring of Council minutes.

Vice Mayor Hamilton explained Council minutes are not meant to be a transcript of what was said at the Council meeting, rather they summarize main points.

Director of Community Development Hanson Hom explained agreements were submitted to the Blind Center in November 2007 for review. Director Hom explained that the Blind Center has stated they would still like to move forward with processing \$5,000 for the community services portion of the agreement; however, they no longer need the \$40,000 portion for capital improvements. Director Hom stated staff is currently in discussions with the center and is attempting to finalize the language within the agreement for community services.

Director Hom explained that staff has dealt with this matter professionally and has been successful in processing 16 other agreements with social service agencies.

Councilmember Moylan stated the minutes reflect a page of discussion on this issue and asked Meyering what was left out of the minutes. Meyering explained that the minutes do not reflect his previous comments about the contents of the Blind Center

report. Meyering stated the comments he made should be recognized. Councilmember Moylan explained Council meeting minutes are summary minutes and within the March 18, 2008, minutes, the tone of what Meyering was trying to bring forward regarding the outside agency is apparent. Meyering disagreed and explained that statements made by the outside agency were not included in the minutes.

Councilmember Whittum verified that Meyering is requesting that the portion of the letter from the Blind Center regarding allegations against the City be included in the March 18, 2008, Council minutes.

Public comments opened at 7:36 p.m.

No speakers.

Public comments closed at 7:37 p.m.

MOTION: Councilmember Whittum moved to amend the March 18, 2008, minutes to include verbatim text from Meyering regarding the Santa Clara Valley Blind Center.

Motion died for lack of a second.

MOTION: Councilmember Howe moved, and Vice Mayor Hamilton seconded, to approve the draft minutes of March 18, 2008, as originally written.

Councilmember Howe stated the minutes are standard and consistent and there is no censorship involved.

Vice Mayor Hamilton stated she agrees with Councilmember Howe and the letter referenced from the Blind Center is already a matter of public record.

VOTE: 6-1 (Councilmember Whittum dissented)

1.B. MOTION Approval of Information/Action Items – Council Directions to Staff

Fiscal Items

1.C. RTC 08–090 List of Claims and Bills Approved for Payment by the City Manager – Lists No. 393 & 394

Staff Recommendation: Council reviews the attached list of bills.

1.D. RTC 08–094 2008 Boards and Commissions Master Work Plans

Councilmember Whittum inquired as to when the “Parks of the Future” study will be coming back to the Parks and Recreation Commission.

Director of Parks and Recreation David Lewis stated the study will come before the commission in July or August 2008, but it is not listed on the work plan because a specific date has not been chosen at this time.

Councilmember Moylan verified with Assistant City Manager Robert Walker that the

possible transition of the Child Care Advisory Board to a staff reporting board would not affect their work plan. Assistant City Manager Walker explained that the report regarding a possible transition is scheduled to come before Council on October 14, 2008.

Vice Mayor Hamilton inquired if there is a standard format for the work plans and what is reviewed. Assistant City Manager Walker stated that staff is working with the boards and commissions to standardize their work plans and provide consistency in reviewing items at the same time of year.

Vice Mayor Hamilton inquired as to the rationale behind why a few commissions included Council actions as well as commission actions on their work plans. Vice Mayor Hamilton stated the Child Care Advisory Board listed State of the City as July 4, 2008, which is not accurate. City Clerk Gail Borkowski stated staff will make the corrections noted.

Public comments opened at 7:43 p.m.

No speakers.

Public comments closed at 7:43 p.m.

MOTION: Vice Mayor Hamilton moved and Councilmember Howe seconded to approve staff recommendation: Council approves the 2008 Boards and Commissions Master Work Plans as submitted.

VOTE: 7-0

1.E. RTC 08-091 Award of a Contract to Develop, Design and Prepare Construction Documents for Streetscape Improvement and Utility Rehabilitation on Murphy Avenue (F0701-67)

Councilmember Whittum stated he pulled this item in order to recuse himself as his home is within 480 feet of a crosswalk in this project.

Councilmember Whittum left the dais.

Public comments opened at 7:44 p.m.

No speakers.

Public comments closed at 7:44 p.m.

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

- Council awards a contract, in substantially the same form as the attached draft, in the amount of \$786,551 to Royston Hanamoto Alley & Abey (RHAA) for design services and construction documents for Murphy Avenue Streetscape Improvements and Utility Rehabilitation; and
- Council approves a design contingency in the amount of \$78,655.

VOTE: 6-0 (Councilmember Whittum recused)

Councilmember Whittum returned to the dais.

- 1.F. RTC 08–082 Notice of Intent to Apply for, Accept, and Appropriate a Grant from the Office of Traffic Safety in the Amount of \$10,000 for Seat Belt Enforcement and Budget Modification No. 42**

Staff Recommendation:

- Council authorizes staff to apply for the OTS Click It or Ticket mini-grant for overtime costs for special enforcement during the national campaign, May 12 – June 1, 2008, and
- Council approves Budget Modification No. 42, if the grant is awarded, and appropriates monies to a special project to finance the associated overtime expenses.

- 1.G. RTC 08–086 Approval to Accept Onizuka AFS Base Realignment and Closure (BRAC) Phase 2 Funding, and Budget Modification No. 41**

Staff Recommendation: Council approves Budget Modification No. 41 to incorporate Onizuka AFS Base Realignment and Closure (BRAC) Phase 2 funding in the BRAC project budget.

Contract Items

- 1.H. RTC 08–098 Reject All Bids Received in Response to Invitation for Bids F0701-64 For Pavement Rehabilitation of Various Streets in the City of Sunnyvale**

Staff Recommendation: Council rejects all bids received in response to Invitation for Bids F0701-64.

- 1.I. RTC 08–097 Award of Bid No. F0701-63 for Street Tree Stump Removal Services**

Staff Recommendation: Council awards two blanket purchase orders, in substantially the same form as the attached drafts and in a combined amount of \$85,450, to Anderson's Tree Care of San Jose for street tree stump removal services as required by the Department of Public Works Street Tree Services.

- 1.J. RTC 08–096 Award of Bid No. F0701-62 for Street Tree Planting Services**

Staff Recommendation: Council awards two blanket purchase orders, in substantially the same form as the attached drafts and in a combined amount of \$61,550, to West Coast Arborists of Anaheim for street tree planting services as required by the Department of Public Works Trees & Landscaping.

Other Items

- 1.K. RTC 08–093 FY 2007-2008 Department of Employment Development Expenditure and Revenue Update, the Impact on Allocated Personnel Positions, and Approval of Budget Modification No. 45**

Approved by Council as revised on April 22, 2008.

Joan Coston, Vice President of City of Sunnyvale Service Employees International Union (SEIU), stated concern over layoffs occurring on June 2, 2008, and requested that the layoffs do not occur until June 30, 2008, as previously discussed. Coston stated the union is also asking that Council extend Consolidated Omnibus Budget Reconciliation Act (COBRA) benefits for an additional two months for affected employees. Coston requested staff explore ways that other cities in the Joint Power Agreement may assist.

Mayor Spitaleri explained he sent out six letters to the surrounding communities asking for assistance in finding placement for NOVA employees.

Public comments opened at 7:45 p.m.

Curtis Black, President of Sunnyvale Managers Association (SMA), stated the association is concerned over the City's rush to permanent changes without conducting the discussions that the director of human resources promised during the meetings held in February 2008. Black stated the association is also concerned with the absence of information regarding associated service levels within this report.

Black stated the association requests Council delay action on this item as follows:

- Delay sending out proposed layoff notices until April 30, 2008, with layoff notices to then be effective as of June 30, 2008.
- Direct staff to meet with affected employee groups to develop alternatives.
- Continue the decreased service levels until a full amount of savings has been obtained without laying off workers.
- Extend COBRA coverage an additional 60 days.

Vice Mayor Hamilton inquired under the current proposal how long would COBRA benefits last. Director of Human Resources Erwin Young explained that under the current proposal, layoff notices would be implemented as of June 1, 2008, and medical benefits would last until the end of July at the City's expense.

Vice Mayor Hamilton inquired as to why employee associations were not given time to review this report ahead of time. Director Young stated the employee associations were notified that a report would be going before Council in March; however, they were not promised that the report would be reviewed by the associations prior to going before Council. Staffing decisions are made by Council and the impacts of those decisions are discussed with the bargaining units afterwards.

Councilmember Lee verified with staff that the cost to extend the layoff date for the 18 positions for two pay periods (until June 30, 2008) would be approximately \$120,000.

Mayor Spitaleri verified if Council approves this item, meetings with the bargaining groups will be set to discuss the impacts of this decision and how to lessen the impact, if possible.

City Manager Amy Chan stated it is premature to speak to those affected until Council provides direction.

Jill Jackson, Vice President of Sunnyvale Employees Association (SEIU) stated City SEIU representatives would like NOVA employees to receive COBRA benefits and have the opportunity to apply for vacancies in the City before they are announced to the general

public. Jackson stated additionally, the association requests that contacts be made with other cities that NOVA supports to see if they have any opportunities for the affected employees.

Mark Bowers, Treasurer of the Sunnyvale Managers Association, verified that the estimate of \$120,000 to keep NOVA employees until June 30, 2008, did not include Friday closures.

Public comments closed at 8:03 p.m.

Councilmember Whittum inquired if it is possible for employees to apply for vacancies prior to being announced to the general public. City Manager Chan stated the City offers promotional opportunities for those employees who are eligible and qualified. City Manager Chan stated the City does not offer preferences, but if a candidate is qualified for a position, they would be eligible to apply for a promotional or employment opportunity.

Director Young stated sessions have been held with NOVA employees and the list of available vacant positions has been given to the employees.

Vice Mayor Hamilton verified with Director of Employment Development Michael Curran that should things change, the action taken this evening could be rescinded.

Councilmember Lee inquired when layoff notices have to be issued and Director Curran explained that each bargaining unit has a different level of requirement with the largest requirement being 30 days. Should Council decide to give a 60 day notice, then notices would need to go out on Thursday, April 3, 2008, (for June 2 layoffs).

City Manager Chan explained that based on staff estimates, and given the action plan before Council, staff anticipates NOVA employees would be employed until June 30, 2008. City Manager Chan stated that if Council has other direction, or if the anticipated funding does not materialize, then different actions will be required. Should the City receive additional revenue, which is not anticipated, then it is possible that layoff actions could be deferred. City Manager Chan stated working with the bargaining units is part of the City's labor negotiations and staff will explore a variety of ideas and options with these units as they are operational in nature. City Manager Chan explained that the ideas and options mentioned have been acknowledged by staff as achievable.

Councilmember Lee inquired if this item were delayed until the next Council meeting, how would that affect the City from carrying out what is needed. Director Young stated any delay will mean that those affected will receive a shorter layoff notice. Mayor Spitaleri questioned why the layoff notice would not be extended the same amount of time as the extension. City Manager Chan explained that a delay would either shorten the notice period or would create a need to find additional funding to extend the notice period. Director Curran added that a one-week extension is \$30,000. Director Curran stated that two options exist: either NOVA stays closed on Fridays, or the City's General Fund would need to be used. Director Curran stated that the staff recommendation is predicated on the City saving \$120,000 with layoffs occurring on June 2, 2008. Should layoffs not occur at that point, then another source would need to be found.

Mayor Spitaleri verified with Director Curran that approximately \$25,000 would be saved

by closing on Fridays.

Vice Mayor Hamilton stated that waiting a week to make a decision will only negatively affect those being laid off and delay discussion of ideas and options.

Mayor Spitaleri stated if Council is planning to do something that will impact the employee groups, such as a layoff, it is important to come up with options or ideas as early as possible, regardless of whether the actual notice has been served. Mayor Spitaleri stated the fact a layoff is being planned is enough to work with the groups.

Vice Mayor Hamilton stated until Council knows which employee classifications are impacted it is not possible to start exploring other employment ideas and options.

MOTION: Councilmember Whittum moved and Vice Mayor Hamilton seconded to approve Alternative 1: Council approves Budget Modification No. 45, decreasing the Department of Employment Development (DED) expenditure and revenue budget for FY 2007/20008 by \$1,066,212 from \$8,546,212 to \$7,480,000; approves reduction in budgeted positions by 25, of which 18 are currently filled.

Councilmember Howe offered a friendly amendment to extend COBRA benefits through the end of August 2008. Councilmember Whittum verified with Director Young that a one month extension would cost \$13,500.

Councilmember Whittum accepted the friendly amendment.

City Manager Chan explained that NOVA would not be able to cover the \$13,500 for extending the coverage, and this expense would have to come out of the City's General Fund on behalf of the other six cities involved.

Councilmember Howe stated that NOVA employees are City of Sunnyvale employees and they should be treated similarly as Council has dealt with laid-off employees in the past.

Vice Mayor Hamilton stated she has not accepted the friendly amendment.

Councilmember Whittum stated that an amendment does not need to be accepted by the second.

Councilmember Lee inquired if the June 2 layoff date could be delayed if additional grant funding was found. City Manager Chan explained that if additional funding was received, the nature of the grant received and its requirements would need to be considered, but it is possible that additional funding could delay some of the layoffs.

Councilmember Lee verified with City Manager Chan that it is possible for Council to use General Funds to delay layoffs, if that was their decision.

Vice Mayor Hamilton stated Council's practice has always been that the second has to accept the friendly amendment for it to be added to the motion. City Attorney David Kahn stated he would need to check, but it is his opinion that the City generally requires the second to also accept the amendment.

Councilmember Moylan explained that friendly amendments are not typical, normally regular amendments are made. Councilmember Moylan stated the role of someone seconding a motion is to avoid lengthy discussions on motions that are supported by only one person. Councilmember Moylan stated in the City of Sunnyvale, those who second a motion have been given more power over a motion than was ever intended. Once a second has been made, the second to a motion should not have any further role in the motion.

Mayor Spitaleri stated he agreed with Councilmember Moylan regarding friendly amendments; however, due to past practice and in the spirit of cooperation, he will approve the continuation of past practice which requires a second to friendly amendments.

Vice Mayor Hamilton offered an amendment to the friendly amendment whereas, the City would work with other employee associations to do some type of matching program to provide the extra month of COBRA and, should that not be successful, then this item would return to Council for approval of funding from the General Fund.

Councilmember Whittum spoke in favor of his motion and early notification of those affected by the layoff. City Manager Chan verified with Councilmember Whittum that the intention of his motion is that if there are no other options then funding will come out of the City's General Fund.

Vice Mayor Hamilton withdrew her amendment and stated she will support Councilmember Howe's friendly amendment.

Restated MOTION: Councilmember Whittum moved and Vice Mayor Hamilton seconded to approve Alternative 1: Council approves Budget Modification No. 45, decreasing the Department of Employment Development (DED) expenditure and revenue budget for FY 2007/08 by \$1,066,212 from \$8,546,212 to \$7,480,000; approves reduction in budgeted positions by 25, of which 18 are currently filled, **with** additional direction that COBRA benefits for laid-off NOVA workers shall be extended through the end of August 2008 at a cost of up to \$14,000, and if there are no other options for funding, appropriate funding from the General Fund.

VOTE: 6-1 (Councilmember Moylan dissented)

Councilmember Lee requested staff keep Council informed about any additional funding that may be received. Should the layoff date not be able to be extended to June 30, 2008, due to funding, Councilmember Lee requested staff bring this item back to Council in order that additional action may be considered.

STAFF RESPONSES TO PRIOR PUBLIC COMMENTS

None.

PUBLIC COMMENTS

Chrystine Lawson, SEIU representative, stated one option that was not explored regarding layoffs was the ability for the City to continue the Friday closure schedule; thereby, allowing sufficient

savings to continue employment until June 30, 2008. Lawson explained that the NOVA employees were under the impression that the Friday closure would continue. Lawson identified that the staff report contradicts this option as it states that NOVA will reopen on Fridays starting mid-May.

Lawson stated SEIU will meet with staff to discuss the option of keeping NOVA closed on Fridays in order to extend layoffs until June 30, 2008.

Councilmember Moylan explained that the option mentioned by Lawson was presented and discussed during a Council closed session and it did not obtain the necessary support. Councilmember Moylan explained to Lawson that her point was well taken and it was recognized by Council.

Councilmember Lee explained to Lawson that the reason he asked that this item come back to Council is to allow for additional action by Council should funding become available.

Curtis Black, President of Sunnyvale Managers Association (SMA), explained that continuing the Friday closures will save \$150,000, and laying off the employees on June 2, 2008, will save the City \$120,000. Black said extending the layoff until June 30, 2008, with Friday closures, will save the City money.

PUBLIC HEARINGS/GENERAL BUSINESS

2. **RTC 08-092 2007-0822 Appeal by a resident of a decision by the Planning Commission approving a Use Permit to allow a modified design for an existing 9' 7" tall wood fence in the reducible front yard for an application located at 734 Liverpool Way (near Goldfinch Way) in an R-0 (Low Density Residential) Zoning District**

Councilmember Whittum disclosed he visited the site and spoke to the applicant.

Councilmember Moylan disclosed he visited the site and the site across the street last year.

Mayor Spitaleri disclosed he visited the site and spoke to both sides involved on this issue.

Assistant Planner Mariya Hodge presented the staff report.

Councilmember Howe inquired if the administrative hearing, the Planning Commission and staff recommendation are in agreement for the fence height with the exception that the set-back of the fence has a one-inch differential. Assistant Planner Hodge stated all parties mentioned are in agreement on fence height with exception of a minor modification in height that has been included in the staff recommendation.

Public hearing opened at 9:20 p.m.

Gil Tarabanovic, appellant, stated his original complaint was placed on June 11, 2007, and was not addressed for three months. Tarabanovic stated the staff recommendation has nothing to do with his original complaint, which questioned what written authorization Ms. Cox obtained from the City or any county agency to build a fence on public property.

Tarabanovic stated he is appealing the Planning Commission decision because he feels a use permit should not be allowed for this residence and that the public notice did not reference any of his concerns. Tarabanovic stated he would like an explanation as to why there was a delay in addressing his complaint as well as why Ms. Cox was not notified about his complaint. Tarabanovic passed out the drawings of the proposed fence for Ms. Cox as submitted by the contractor in which the fence is shown at 6', rather than the 5' 7" as identified by staff.

Vice Mayor Hamilton stated the Planning Commission recommendation would move the fence to the property line which appears to resolve Tarabanovic's original complaint. Tarabanovic stated the drawings submitted are totally different than what staff is recommending. Tarabanovic stated there is a huge discrepancy with what is listed and what is actual regarding the grading at this property. Vice Mayor Hamilton asked staff if they checked the grades at the property. Assistant Planner Hodge stated a formal survey of the property was not done, but staff did go out and verify the measurements.

Councilmember Moylan explained that the Planning Commission approved with conditions which require that the new fence be placed within the property line and that the height limits are from the grade level. Councilmember Moylan explained that whether the fence drawings are right or wrong does not matter, because it is the City's job to enforce the conditions that the Planning Commission has put in place. Tarabanovic replied that the neighbor across the street from Ms. Cox has a similar situation, in that the home sits on a corner lot and also has as a reducible side yard. Tarabanovic explained that the City required that this homeowner obtain a building permit for their fence, not a use permit. Councilmember Moylan explained that it is the City's call as to what type of permit is required.

Councilmember Moylan stated that Tarabanovic previously came before Council in support of the neighbor's fence, which was a foot-and-a-half higher than City code, yet now he is requesting that Ms. Cox's fence be within City code. Councilmember Moylan stated it appears that Tarabanovic is supporting both sides of the argument based on what appears to be neighborhood disagreements.

Councilmember Moylan asked Tarabanovic what his appeal entails, and Tarabanovic stated his appeal concerns the overall height of the fence. Councilmember Moylan verified with staff that the inside measurement of the fence would be 5' 9" and measured from the curb, the fence would be 9' 5" due to the significant grade differential. Councilmember Moylan verified with staff that City code requires a use permit for anything that measures over seven feet from the curb.

Assistant Planner Hodge explained that design guidelines suggest that fences should be six feet or lower, if possible; however, staff practice has been, where there is a significant grade differential, staff recommends approval of six feet of interior height. Councilmember Moylan stated based on staff's explanation and in order to be consistent in the neighborhood, what the Planning Commission is recommending is reasonable as long as it is enforced properly. Tarabanovic cited the City's Municipal Code and stated the code requires that a building permit be obtained for this fence.

Councilmember Whittum inquired what Tarabanovic feels Ms. Cox is missing in permits. Tarabanovic inquired as to what condition existed for the neighbor that required them to

pull a building permit, but not Ms. Cox.

Dorothe Cox, applicant, identified several delays and the cost that she has incurred during this process. Cox stated she has accepted the Planning Commission's conditions. Cox stated the fence will be at the same height as her rear neighbor's. Cox spoke further about the proposed fence.

Councilmember Whittum inquired if a building permit is needed for a fence that measures less than six feet in height. Assistant Planner Hodge stated that the Building Division measures fences from the adjoining grade, which is different than the Planning Division. Assistant Planner Hodge explained that a permit is not necessary for a fence which is less than six feet in height unless the fence is located directly atop a retaining wall as a single structure.

Vice Mayor Hamilton verified with staff that a building permit is not required for the fence as it will no longer be placed on top of the retaining wall; however, the retaining wall will require a building permit as it is being modified.

Sugher Singm stated support for the Planning Commission's approval of the proposed fence.

Michael Thornton stated concern over the varying criteria that staff uses when approving fences on reducible front yards. Thornton stated last year when he asked staff to measure his fence from the inside, staff would not agree to do so. Thornton expressed concerns over the height of Cox's fence.

Councilmember Moylan asked Thornton if he is requesting a specific height different than what the Planning Commission set for Ms. Cox's fence. Thornton confirmed that he is requesting a different height limit and explained that 8' 5" from the top of the curb is more than adequate.

Tarabanovic passed out information written by Cox and pictures of fences in the neighborhood to Council. Tarabanovic stated the fence will slope up to 16 inches and inquired if the grade will be increased. Assistant Planner Hodge stated the applicant has stated she is not planning to increase the grade; however, staff is not aware whether filling in sections of the grade will be required. Councilmember Moylan verified with staff the fence would not change with the grade change in the back yard; rather the grade would be leveled out to the extent that the fence would not be more than 5' 9" from the grade, or exceed 9' 6" from top of curb.

Cox stated she will match the height to her neighbor's, which is 8' 8¹/₄" from top of curb, which will be less than 5' 9" from the inside of her backyard.

Public hearing closed at 9:38 p.m.

MOTION: Vice Mayor Hamilton moved and Councilmember Swegles seconded to approve Alternative 1: Council upholds the decision of the Planning Commission to approve the use permit with the design shown in Attachment D, and adopt the attached conditions of approval.

Vice Mayor Hamilton stated she would leave the decision up to the applicant as to whether she matches her neighbor's fence height.

Councilmember Moylan stated the additional height is consistent with what has been approved previously; however, should Cox decide to match her neighbor's fence, at nine inches lower than what is allowed, he would hope that would create good will within the neighborhood.

Councilmember Swegles verified with staff that five feet from the highest adjoining grade is the minimum requirement for backyards with pools. Councilmember Swegles stated he agreed with Councilmember Moylan that if Cox moves forward with a lower fence, that would be a goodwill gesture for the neighborhood.

VOTE: 7-0

Mayor Spitaleri stated it is past 9:30 p.m.; however, he feels Council should continue with the agenda. Mayor Spitaleri asked that Item 5 be taken next on the agenda.

Mayor Spitaleri called for a five-minute recess.

Mayor Spitaleri reconvened the Council Meeting. (time not recorded)

5. RTC 08–100 Consideration of Additional Budget Issues and Possible Policy Revisions

Assistant City Manager Robert Walker presented the staff report.

Councilmember Swegles verified with staff that Council is not approving any of these items, rather if an item is moved forward by Council this evening then it will receive a recommendation by the city manager and further consideration by Council prior to being adopted.

Vice Mayor Hamilton verified with staff that approximately a year ago, the City changed its process, in that the Community Development Block Grant (CDBG) funding requests went through the Housing and Human Services Commission, which makes a recommendation to the city manager for additional funding requests; however, groups funded by the General Fund are still handled by Council. Director Hom explained that groups funded through the General Fund are not categorized as human service groups because to qualify as a human service group, 51 percent or more of those served must be dependent or economically deprived.

Vice Mayor Hamilton verified that the two agencies that are funded by the General Fund have a long tradition of being funded by the City, and therefore have been given the courtesy of being notified by staff.

Councilmember Whittum disclosed that he met with Mr. Frasse from the Silicon Valley Blind Center on three occasions.

Public hearing opened at 9:56 p.m.

Kenneth Frasse, representative from the Silicon Valley Blind Center, stated they are not in

discussion with the City regarding monies they were awarded last year.

Frasse stated the City of San Jose covered \$40,000 in capital improvements; however, they will not be funding any services. Frasse stated the center now has a serious shortfall in service monies and without funding assistance from the City of Sunnyvale, the Blind Center will probably not be able to provide service to Sunnyvale residents. Frasse stated he had a recent discussion with the Director of Community Development Hom; however, the unused funding from the City for the center's capital improvement cannot be converted to service money. Frasse stated he is asking the Council to consider if there are any other areas in terms of service monies that can be used to assist the center.

Vice Mayor Hamilton inquired why the contracts were not finalized. Frasse stated there were material errors and flaws in the contracts.

Councilmember Whittum verified with Frasse that the center serves about 200 residents a year. Councilmember Whittum asked about the primary functions of the center and Frasse explained that the center works with those who are losing, or have lost, their vision, and their principal job is to teach rehabilitation skills.

Councilmember Whittum inquired what the consequences would be if the City did not approve funding for the Blind Center. Frasse stated he has to make a budget decision in May as to what will need to be downsized, and without additional funding the center may not be able to serve all of the Sunnyvale residents in need of services.

Councilmember Swegles inquired if Frasse is requesting more than the \$5,000 that has already been approved. Frasse confirmed that he is asking for additional funding, as \$5,000 will only serve a negligible amount. Councilmember Swegles inquired how many blind centers are in the area, and Frasse stated there are five centers – Oakland, San Francisco, Santa Cruz, Palo Alto and Sunnyvale – however, services offered at each location are somewhat different.

Councilmember Lee verified that the \$40,000 in CDBG funds were for capital improvements and cannot be transferred into social service funds, which are limited to 15 percent. Councilmember Lee verified that City of San Jose had been giving the Blind Center operations money over the past 12 years. Frasse stated the City of San Jose had a surplus of building monies and wanted the Blind Center to finish this project, which was the rationale for not funding the center with service money this year.

Arnold Chew explained how he lost his eyesight from a virus, and spoke of how the center has assisted him in regaining his life.

Steve Mahan stated he has been a client of the Blind Center for over two years. Mahan lost his eyesight through a congenital eye defect, and spoke of the benefits of the Blind Center and urged Council to consider supporting the center.

Michelle McGrew, client of the Blind Center, spoke of the benefits she has received over the years. McGrew stated her it is her hope that Council will be able to find additional resources to assist the blind center.

Kim Le, Susan Nishihara and Allen Jones spoke of the benefits of the Blind Center.

Jim Griffith stated support for funding of Silicon Valley Leadership, Junior Achievement of Silicon Valley and the creation of a new position for a Web site administrator.

Public hearing closed at 10:36 p.m.

Vice Mayor Hamilton verified with staff that CDBG funds cannot be used to replace committed funds from the General Fund. Vice Mayor Hamilton verified with staff that the 15 percent public service fund portion of the CDBG funds are fully committed to approximately 16 other social service agencies

Vice Mayor Hamilton verified the City's portion of the capital improvement at Columbia Neighborhood Center is funded with CDBG funds.

MOTION: Councilmember Whittum moved and Mayor Spitaleri seconded to approve inclusion of \$45,000 for the Santa Clara Valley Blind Center in the draft budget for ranking and consideration at the May 2008 City Manager's Recommended Budget Workshop.

Councilmember Whittum stated his motion is to allocate \$45,000 from the General Fund for Santa Clara Valley Blind Center. Councilmember Whittum stated this allocation is not meant to set a precedent; rather it is meant to cover a one-time budget shortfall in order to provide services for Sunnyvale residents who need this center's services.

Vice Mayor Hamilton stated she will not support the motion because she does not see this as a one-time shortfall. Vice Mayor Hamilton stated the City already budgeted \$45,000 for this organization and the center is now saying that they do not need \$40,000 of those funds. Vice Mayor Hamilton stated the City has a process for allocating funds through the CDBG process and although at times the City may use some General Funds as a part of that process, the City does not use the General Fund outside of that process.

Mayor Spitaleri explained that the result of this motion passing would mean that this item will then be included for consideration in the city manager's recommended budget and will come back to Council for consideration in May during the budget workshop.

Mayor Spitaleri verified with staff that the \$45,000 presently available to the Blind Center would require finalizing the details of the agreement; however, \$40,000 of the allocation is available for capital improvements only, and \$5,000 may be used for services.

Councilmember Howe verified that the Santa Clara Valley Blind Center applied for funding during the last cycle of CDBG funding and was awarded \$5,000. Director Hom stated if representatives from the center sign the current agreement, they can then obtain reimbursement for their services. Director Hom stated going forward, if they provide a report showing the funds were utilized for what they were intended, the center could then qualify to be recommended for a second year of funding at \$4,500. The future service amount will be less due to the 11.5 percent across-the-board cut in CDBG allocations.

Councilmember Moylan stated he supports including this item with the budget issues being forwarded to the city manager, since the items being forwarded will come back to Council for further discussion. Councilmember Moylan stated he also supports Alternative 3, which will end last-minute budget issues being considered.

Councilmember Moylan explained that when deciding which items to approve for funding during the budget hearing, he considers how effective an organization has been in working with City staff. Councilmember Moylan stated he does not accept the assertions that staff denied funding to the Blind Center. Councilmember Moylan stated although he will include the Blind Center's request in the budget ranking process, the relationship this organization has had with City staff will be a factor in his ranking.

Councilmember Whittum stated reaching a conclusion on how the money was disbursed is not relevant because the fact is that it was not disbursed.

Mayor Spitaleri stated he supports this motion moving forward, as his concern is that this is a service that people need; whereas, a Web site administrator, although nice to have, is not a necessity. Mayor Spitaleri urged his colleagues to support moving this item forward for further consideration

Councilmember Swegles stated he will not support the motion as he agrees with Vice Mayor Hamilton and that too often Council attempts to find money that was not already allocated. Councilmember Swegles stated he does not want to send false hope that this item might be funded because he does not see that the City has the funds to support this item other than the \$5,000 that has already been allocated.

VOTE: 4-3 (Vice Mayor Hamilton, Councilmembers Howe and Swegles dissented)

MOTION: Vice Mayor Hamilton moved and Councilmember Howe seconded to approve Alternative 1: Council approves one or more additional budget issue papers for Council's consideration in the FY 2008/09 budget transmittal.

Vice Mayor Hamilton explained her reasons for supporting the staff recommendations on each additional item listed in the staff report.

Councilmember Whittum stated he will oppose the motion because the City is short of funds and there are a number of items listed. Councilmember Whittum stated funding of the Blind Center ranked above the other items listed, which is why he supported moving that forward.

Councilmember Whittum stated concern over Junior Achievement of Silicon Valley and Monterey Bay, and Silicon Valley Leadership being separated out from the other community groups. Councilmember Whittum stated he would prefer to see these groups included with the process of review by the Housing and Human Service Commission and not be called out separately.

Councilmember Whittum stated he is also opposed to the staff recommendation for spraying the street trees for aphids. Staff recommends that this budget issue be dropped and Councilmember Whittum disagreed. Councilmember Whittum explained that the City planted these trees, the aphids are a nuisance and it is a service that the City should provide to citizens.

Councilmember Swegles stated he will oppose this motion because he would like each item to be taken individually. Councilmember Swegles stated he supports some of the

items, but not all.

Vice Mayor Hamilton stated most of these services are things only the City can provide and they do directly affect the citizens by creating a better experience in dealing with the City.

Vice Mayor Hamilton stated she supports the staff recommendation regarding the spraying of aphids because homeowners are responsible for their trees and if Council continues to allocate these items, the unfunded projects list will not be able to be addressed.

Vice Mayor Hamilton stated that adding these items to the list will allow for further analysis and information to come back to Council for consideration.

Mayor Spitaleri stated he will oppose the motion because the items are grouped together.

VOTE: 3-4 (Mayor Spitaleri, Councilmembers Lee, Swegles and Whittum dissented)

MOTION FAILED.

MOTION: Councilmember Whittum moved to include *Silicon Valley Leadership, Junior Achievement of Silicon Valley* and *Spraying of Street Trees for Aphids* as budget issues for the city manager's recommended budget and to drop all the other remaining items.

Vice Mayor Hamilton suggested each item be moved and voted on separately.

Motion died for lack of a second.

MOTION: Vice Mayor Hamilton moved and Councilmember Moylan seconded to approve staff recommendation to refer the budget issue for *Electronic Utility Bill Presentation and Payment* for consideration in the FY 2008/09 recommended budget.

VOTE: 3-4 (Mayor Spitaleri, Councilmembers Howe, Swegles and Whittum dissented)

MOTION FAILED.

MOTION: Vice Mayor Hamilton moved and Councilmember Moylan seconded to approve staff recommendation to refer the budget issue for *Create New Position of Web site Administrator* for consideration in the FY 2008/09 recommended budget.

VOTE: 3-4 (Councilmembers Howe, Lee, Swegles and Whittum dissented)

MOTION FAILED.

MOTION: Vice Mayor Hamilton moved and Councilmember Moylan seconded to approve staff recommendation to refer the budget issue for *Silicon Valley Leadership and Junior Achievement of Silicon Valley and Monterey Bay* for consideration in the FY 2008/09 recommended budget.

VOTE: 7-0

MOTION: Vice Mayor Hamilton moved and Councilmember Moylan seconded to approve staff recommendation to refer the budget issue for *Council Meeting Minutes* for consideration in the FY 2008/09 recommended budget.

VOTE: 4-3 (Councilmembers Howe, Swegles and Whittum dissented)

MOTION: Vice Mayor Hamilton moved and Councilmember Moylan seconded to approve staff recommendation to refer the budget issue for *Electronic Records Management* for consideration in the FY 2008/09 recommended budget.

VOTE: 4-3 (Councilmembers Howe, Swegles and Whittum dissented)

MOTION: Councilmember Moylan moved and Councilmember Howe seconded to approve Alternative 3: Council approves creating a Council policy requiring that all future years' budget issues be approved by a majority vote of City Council, and by no later than the last week of February each year. Defer any budget issue papers raised after each Budget Issues Workshop, or another specific date as determined by Council, to the following fiscal year's Budget Issue Workshop, similar to the manner in which new study issues are forwarded to the next calendar year's Study Issues Workshop.

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

MOTION: Mayor Spitaleri moved and Councilmember Whittum seconded to approve staff recommendation to refer the budget issue for *Spraying of Street Trees for Aphids* for consideration in the FY 2008/09 recommended budget.

VOTE: 3-4 (Vice Mayor Hamilton, Councilmembers Howe, Moylan and Swegles dissented).

MOTION FAILS.

Councilmember Whittum stated the budget issue regarding a *Centralized Customer Concern Service Tracking System* was not moved or voted on and Vice Mayor Hamilton explained that this item was purposefully left off because staff was not recommending moving it forward. Vice Mayor Hamilton stated Council is making recommendations on what to include, not what to drop, so by not addressing this item it automatically will be dropped.

3. RTC 08-089 Appointment of Sunnyvale Representative to the Advisory Council to the Council on Aging (ACCOA)

Intergovernmental Relations Officer Yvette Agredano presented the staff report.

Councilmember Swegles verified with staff that either the mayor or Council could appoint a Councilmember or a community member to serve in this position. Intergovernmental Relations Officer Agredano stated the current roster for this advisory council does not consist of any currently elected officials.

Councilmember Swegles explained to the mayor that he would be interested in serving on

this advisory council because he interacts with senior citizens on a regular basis.

Vice Mayor Hamilton inquired about the length of term for this position and Intergovernmental Relations Officer Agredano stated she did not have that information and would need to return to Council with the answer.

Councilmember Lee verified with staff that the bylaws state if a city has their own Senior Citizens Advisory Council, then the advice of that council assists with appointment. In the City of Sunnyvale, there is an advisory council on senior issues; however, they are advisory to staff and do not meet the bylaw criterion. Assistant City Manager Walker stated in the past, Council has always made the appointment, but it was made through the boards and commissions process. Staff identified that since this group is not advisory to Council, it should not be a part of Council's boards and commissions; but the appointment should still be made by the mayor or Council as an intergovernmental assignment.

Intergovernmental Relations Officer Agredano stated she found the term length for this appointment, which is three years.

Mayor Spitaleri questioned if a Councilmember would be able to continue serving on this advisory council at the point that their Council term ended. Assistant to the City Manager Coryn Campbell stated the Advisory Council to the Council on Aging bylaws do not require members to be elected officials; therefore, it appears that the Councilmember could continue serving, but she would need to check with the advisory council for a final determination.

Councilmember Swegles explained that previously appointments to this advisory council have been citizens-at-large. Councilmember Swegles stated if he was selected to serve, that would not keep citizens-at-large from also serving on this advisory council in the future.

Public hearing opened at 11:19 p.m.

No speakers.

Public hearing closed at 11:19 p.m.

MOTION: Councilmember Whittum moved and Councilmember Lee seconded to approve Alternative 2:

- Council confirms Advisory Council to the Council on Aging appointment as a Council Intergovernmental Relation Assignment appointed by Council.

with

Council appoints Councilmember Swegles as the Sunnyvale Representative to the Advisory Council to the Council on Aging.

City Attorney Kahn stated this item should have two separate motions, with the first motion regarding whether the appointment should be made by the mayor or Council. Once that decision is made, then if the appointment is to be made by the Council, Council can entertain motions for the appointment.

Councilmember Whittum withdrew his motion.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded to approve Alternative 1 and 3:

Alternative 1: Council confirms Advisory Council to the Council on Aging appointment as a Council Intergovernmental Relation Assignment appointed by the mayor.

Alternative 3: Council approves that as vacancies occur, and as needed, staff is directed to recommend individuals for consideration.

VOTE: 7-0

Councilmember Howe requested the mayor consider appointment of Councilmember Swegles.

Mayor Spitaleri appointed Councilmember Swegles as the Sunnyvale Representative to the Advisory Council to the Council on Aging Silicon Valley (ACCOA).

4. RTC 08-088 Award of Taxicab Franchise to A-1 Cab Company

Public Safety Captain Dave Pitts presented the staff report.

Mayor Spitaleri verified with staff that this is an existing cab company that is up for renewal.

Councilmember Howe verified with staff that A-1 Cab Company's permit will expire on April 6, 2008; however, their franchise renewal will not take effect until May 9, 2008. Councilmember Howe inquired if there is a way to bridge the time gap. Captain Pitts stated the taxicab company requested that the renewal be effective on May 9, 2008. Director of Public Safety Don Johnson stated in the past, Council has extended the franchise time in order to cover any gap of time. Director Johnson stated he would be agreeable if Council wished to make this adjustment.

Public hearing opened at 11:25 p.m.

No speakers.

Public hearing closed at 11:25 p.m.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded to approve Alternative 1: Council introduces and adopts an ordinance awarding a non-exclusive franchise for taxicab service to A-1 Cab Company for the period of May 9, 2008, through May 8, 2010, per applicant request, and authorizes the city manager to execute necessary documents of agreement

with

Council extends the existing contract for A-1 Cab Company to May 9, 2008.

City Clerk Borkowski read the title of the ordinance into the record.

VOTE: 7-0

NON-AGENDA ITEMS & COMMENTS

Approved by Council as revised on April 22, 2008.

COUNCIL: None.

STAFF: None.

Vice Mayor Hamilton stated when the motion was made earlier this evening approving the draft March 18, 2008, Council meeting minutes, it was not clear if it was the revised draft minutes or the original draft minutes that were approved. City Clerk Borkowski stated according to the motion, the original set of minutes submitted to Council were the approved minutes, not the revised version.

INFORMATION ONLY REPORTS/ITEMS

- Tentative Council Meeting Agenda Calendar
- Draft Minutes of the Arts Commission Meeting of February 20, 2008
- RTC 08-099 Board and Commission Resignation

ADJOURNMENT TO STUDY SESSION

Mayor Spitaleri adjourned the Council meeting in honor of former mayor Julia Miller's parents, Ivy Kathleen (Wright) Fox and John Elliott Fox IV. A moment of silence was held and then Mayor Spitaleri adjourned the meeting to a study session at 11:29 p.m.

Gail T. Borkowski
City Clerk

Date