

**APPROVED MINUTES
SUNNYVALE CITY COUNCIL
TUESDAY, MAY 13, 2008**

5 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), and Service Employees International Union (SEIU) Local 715 (part-time employees).

Conference with Real Property Negotiators (Government Code 54956.8) Property: Fair Oaks Health Clinic site at Garland & Fair Oaks. Agency Negotiator: Amy Chan, City Manager. Negotiating parties: Patrick Love for the County of Santa Clara. Under negotiation: price, terms of payment.

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
Affordable Housing Manager Ernie DeFrenchi
Transportation Traffic Manager Jack Witthaus
Housing Program Analyst Katrina Ardina
Director of Human Resources Erwin Young
Assistant Planner Noren Caliva
Intergovernmental Relations Officer Yvette Agredano
City Clerk Gail Borkowski

CLOSED SESSION REPORTS FOR MAY 13, 2008

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

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SPECIAL ORDER OF THE DAY

Recognition of the Volunteer Center of Silicon Valley.

SPECIAL ORDER OF THE DAY

State of the District Presentation by Fremont High School District.

PUBLIC ANNOUNCEMENTS

Kevin Jackson, Bicycle and Pedestrian Advisory Commission Chair, speaking on his own behalf, announced Bike to Work Day activities.

Jim Griffith announced that Leadership Sunnyvale is accepting applications for the class of 2008/09.

Vice Mayor Hamilton announced the City's upcoming event, Hands on the Arts.

CONSENT CALENDAR

Councilmember Howe pulled Item 1.E.

Vice Mayor Hamilton moved and Councilmember Howe seconded to approve the Consent Calendar with the exception of Item 1.E.

VOTE: 7-0

- 1.A. Approval of Revised Draft Minutes of April 22, 2008**
- 1.B. Approval of Revised Draft Minutes of May 6, 2008**
- 1.C. Approval of Information/Action Items – Council Directions to Staff**

Fiscal Items

- 1.D. RTC 08–152 List of Claims and Bills Approved for Payment by the City Manager
– List No. 400**

Staff Recommendation: Council reviews the attached lists of bills.

- 1.E. RTC 08–155 Request Approval to Purchase Below Market Rate (BMR) Ownership**

Approved by Council on June 3, 2008!

Property at: 595 Blackwood Terrace, Sunnyvale, and Approval of Budget Modification No. 54

Councilmember Howe explained that within the Below Market Rate (BMR) program, units should be turned over to the next individual in a condition that is acceptable; however, this unit appears to need a lot of rehabilitation. Councilmember Howe inquired why the unit had a rehabilitation cost attached to it. Affordable Housing Manager Ernie DeFrenchi explained that the rehabilitation cost included upgrading the unit to current standards. Manager DeFrenchi stated the \$61,000 expense includes escrow fees, property taxes, and a set-aside fund to cover any added expenses in closing the purchase.

Councilmember Howe inquired whether the City incurs these types of expenses when a unit is sold from one seller to another and the City is not involved with the transaction as an owner. Manager DeFrenchi explained that when the City is not involved in the transaction, the City would not normally incur this type of expense. Typically, the City would perform an inspection of the unit, identify the items that need to be rehabilitated, and then would require the seller to make those corrections or the City would fix the units and hold the funds in escrow as part of the closing.

Councilmember Howe inquired why the City would fund the expense for this unit when it is not required with a traditional transfer. Manager DeFrenchi explained that when a traditional transfer between seller and buyer occurs, there is an equity component built in to help cover those costs. In this particular situation, the seller over-financed the property and no equity is left in the unit. If it was sold as it is, the new buyer would have to make the upgrades themselves. Manager DeFrenchi explained that the purpose of the program is move new buyers into units that are up to the current standards so as not to cause the buyer additional expenses.

Councilmember Howe verified with Manager DeFrenchi that the seller pulled out approximately \$200,000 in equity. Councilmember Howe stated that this owner took their funds when they refinanced this property and left the City with the \$60,000 repair bill for the unit. Manager DeFrenchi explained the repair cost is not actually a bill because the City will recapture the funds when the unit is sold. Councilmember Howe responded that when the unit is sold the new BMR buyer will pay the \$60,000 expense because their purchase price will be higher by that amount. Councilmember Howe stated he understands that the expense will be recouped when the unit is sold; however, that causes the new BMR buyer to actually be stuck paying for the rehab of the unit, while the seller has taken all the equity and not kept the unit in good condition. Councilmember Howe stated that is not the way the program is supposed to work. Manager DeFrenchi explained that any unit that is up to the current standards would be priced the same.

Councilmember Howe verified with Manager DeFrenchi that this issue has been brought before the city attorney regarding the City's options on how to obtain the repair cost back from the seller. Councilmember Howe inquired what options are being reviewed and Manager DeFrenchi stated the options are still being discussed. Councilmember Howe stated a problem exists when a seller has the ability to walk away with approximately \$200,000 in funds and yet the City has no recourse to obtain the \$60,000 that the City will spend making repairs from the seller. Councilmember Howe stated this is a problem that needs to be addressed.

Director of Community Development Hanson Hom stated when the units are rehabbed for resale, they are being brought up to a standard typically higher than when a unit is sold from

seller to buyer. Director Hom stated staff felt it would be best to bring the unit up to as new of condition as possible in order to get the maximum price allowable under the affordable housing provisions. Director Hom stated he does not see this as passing the cost on to the buyer because if the buyer wished to purchase a completely new unit, the price would be higher. Staff is trying to deliver as new of a unit as possible.

Councilmember Howe inquired what the cost of the unit would be if the City was not involved with this unit and staff responded that it would be approximately \$166,000, which would be the price without the rehab work being done. Councilmember Howe stated that someone could have bought the unit for \$166,000 and lived in a reasonable fashion as a below market rate unit if the City did not have to get involved.

City Manager Chan explained that a transaction between two private parties allows the parties to sell their properties in whatever condition and price they agree upon. The City is passing on BMR units to potential buyers and if the unit is not marketable, it is difficult to attract BMR buyers, even though the unit may be less expensive. City Manager Chan stated the City does not need to perform rehab on a property; however, the City's objective should be to have as many units available in marketable condition for potential buyers. Staff is attempting to have this unit prepared to sell; however, Council may direct staff to sell the unit in its current condition. City Manager Chan stated if Council has concerns over the BMR program, Council can raise them as a study issue.

Councilmember Howe stated the City has a policy that there will be reasonable upkeep on a BMR unit so that when it is transferred, it will be transferred in a reasonable condition. Councilmember Howe stated the operational issue concerns whether staff has deemed the unit acceptable in its current condition which is an issue he will leave to the city manager. Councilmember Howe explained that he understands that the City is required to have affordable housing in the City through the BMR program; however, his concern is over the City having to add an additional \$63,000 to a unit for repairs where the owner walked away with \$200,000. Councilmember Howe stated this type of scenario does not help affordable housing in the City.

Mayor Spitaleri stated Councilmember Howe's concerns can be addressed with the city manager at a later time.

Vice Mayor Hamilton inquired as to how this unit came to the City's attention and Manager DeFrenchi explained that staff performs an annual audit to ensure that homeowners are in compliance with the program, and it was during this audit that staff determined that the owner had over-financed the property. After the audit, the owner indicated she could no longer afford to make her payments on the property. Manager DeFrenchi explained that the City has the first right of refusal to purchase units in order to preserve properties within the program and that is what staff is recommending in this case.

Vice Mayor Hamilton inquired whether staff anticipates that similar situations will arise due to the current sub-prime mortgage situation and Manager DeFrenchi stated at this time staff does not know what the results will be from the annual audit; however, results should be available in the new fiscal year. Director Hom explained that this situation is not a sub-prime situation; rather this situation occurred because a mortgage company or bank did not realize that this property was BMR and they went ahead and financed the unit at the market value. The bank recognizes that they financed a piece of property beyond its market value and they are absorbing the loss.

Councilmember Swegles stated he would like to sponsor a study issue on how to recoup damages or fees from BMR units. Councilmember Swegles would like the study to explore options on how to avoid having new buyers absorb the renovation costs from the previous owner.

City Manager Chan explained that the City does pursue fraud issues. In response to Councilmember Howe's earlier question about this particular owner, the City Attorney is exploring ways to pursue the property owner and City Manager Chan stated she will report back to Council on these efforts. City Manager Chan suggested that a study issue would not be required as these types of actions are normal day to day operations; however, nothing would prevent Council from setting a policy, but it might not be necessary.

Councilmember Swegles stated he was not speaking about fraud, rather he was suggesting a study issue to review the maintenance and upkeep of the BMR units. City Manager Chan stated that policy is already in place; however, the situation at hand is that staff did not realize the situation with this property until the audit was performed. Currently the City is doing damage control with respect to this issue.

Councilmember Moylan explained that if this was not a policy issue, then this item would not be on the agenda.

Councilmember Moylan inquired as to how this unit will receive a sales price given the fact the owner violated the rules under which they received subsidized housing. Manager DeFrenchi stated the City uses the current Consumer Price Index (CPI) value for the unit which becomes the sales price. Councilmember Moylan stated that is a reasonable way to arrive at a sales price for someone who turns the unit back to the City as part of a good faith sale. However, in this situation the owner broke the BMR rules and pulled out \$200,000. Councilmember Moylan questioned if the City has the authority to pay the seller below market rate for their unit. Manager DeFrenchi stated he was not aware if that option existed. Councilmember Moylan suggested adding a clause in future BMR agreements that would allow the City to have the option to purchase the unit at below market rate should the owner violate BMR rules. Councilmember Moylan explained that this clause could assist the City from having to cover this type of budget modification.

Manager DeFrenchi explained that the lender on this property knows the value of the property and staff has explained how the CPI value works. Staff would need to have further discussions with the city attorney if attempts were made to reduce the value price of the unit. Councilmember Moylan stated since the lender dropped the ball on this and did something that was not allowed, they should own the expense. The owner might not have the resources to repay the City but certainly the lender would. Councilmember Moylan verified that staff is having discussions with the city attorney over this possibility.

Public comments opened at 7:53 p.m.

No speakers.

Public comments closed at 7:53 p.m.

MOTION: Councilmember Howe moved and Vice Mayor Hamilton seconded to approve Alternative 1: Council approves Budget Modification No. 54 to appropriate \$166,237 from the Housing Fund/Housing Mitigation Sub-Fund Reserve to Project 814700 BMR Acquisition for the purchase, rehabilitation costs, ongoing monthly costs and associated

fees related to the acquisition and resale of 595 Blackwood Terrace, Sunnyvale **with** additional direction to the city manager and city attorney to work on the possibility of obtaining additional funds from the seller and/or the lender before this deal is so far down the road that the City no longer has any options for restitution.

Councilmember Howe mentioned that this issue has been ongoing for a period of time.

VOTE: 7-0

Personnel Items

- 1.F. RESOLUTION Amendment to the Classification Plan and Salary Resolution to Add
RTC 08-159 the Newly-Established Classifications of Mail Clerk and Senior Plan
Check Engineer.**

Staff Recommendation: Council adopts a Resolution to amend the City's Classification Plan and Salary Resolution to add the newly-established classifications of Mail Clerk and Senior Plan Check Engineer.

- 1.G. RTC 08-150 Approval of Contract for Third Party Workers' Compensation
Administration Services.**

Staff Recommendation: Council authorizes a two-year contract in substantially the same form as the attached Agreement and in an amount not to exceed \$257,500 for FY 2008/09, and \$263,938 for FY 2009/10, to Gregory B. Bragg & Associates to provide workers' compensation claims administration services with the option that the City reserves the right to reduce the claims administration fee for FY 2009/10, based upon the number of open indemnity claims at the conclusion of FY 2008/09. The fee for additional services, as referenced in this report, shall remain at \$5,000 for FY 2008/09 and FY 2009/10.

Contracts

- 1.H. RTC 08-145 Award of Bid No. F0703-83 to Remove and Replace 200 Theater
Seats**

Staff Recommendation: Council awards a purchase order, in substantially the same form as the attached draft and in the amount of \$56,421.26 to Krueger International Incorporated, to remove and replace 200 theater seats.

- 1.I. RTC 08-151 Award of Bid No. F0703-80 for the Installation of Curb Ramps**

Staff Recommendation:

- Council awards a contract, in substantially the same form as the attached draft and in the amount of \$82,110, to Spencon Construction for the installation of curb ramps; and
- Council approves a project contingency in the amount of \$12,317.

Other Items

- 1.J. RTC 08-136 Amendments to Countywide AB 939 Fee and Household Hazardous
Waste Agreements for FY 2008/09**

Staff Recommendation: Council authorizes the City Manager to execute the proposed

Approved by Council on June 3, 2008!

amendments to the Agency Agreement for Countywide AB 939 Fee and the Agency Agreement for Countywide Household Hazardous Waste Collection Program (with an augmentation amount of \$180,000) and continues to delegate to the City Manager the authority to approve an increase of up to 20% (\$36,000) in the City's augmentation amount.

STAFF RESPONSES TO PRIOR PUBLIC COMMENTS

None.

PUBLIC COMMENTS

Milina Javonovic thanked Councilmembers for their advocacy and actions regarding sustainability. Javonovic explained that during the current Councilmember terms, Sunnyvale became the 13th greenest City in the nation and also number one in the state for alternative fuel vehicles within the City's fleet. Javonovic stated much more still needs to be done and urged Council to approve a full-time sustainability coordinator position for the City of Sunnyvale.

Councilmember Swegles questioned why Javonovic was not in favor of a part-time coordinator. Javonovic explained that the position has a lot to do especially if regional cooperation is included and a full-time person is necessary.

Patrick Gallagher spoke in support of a full-time sustainability coordinator position and explained the benefits that could be achieved with such a position. Gallagher stated a part-time person would not be sufficient to achieve the goals that the City has undertaken.

Jim Griffith spoke in support of a carbon footprint audit which will be presented to Council at the June 10, 2008 Council meeting. Griffith urged Council to approve a carbon footprint audit and have it conducted by a sustainability coordinator. Griffith stated the audit would be an element to Sunnyvale's long-term sustainability plan and should be conducted by a sustainability coordinator. Griffith stated whether or not Council approves a full-time sustainability coordinator, it is important the City budget for a citywide carbon audit.

Craig Horne spoke in support of a full-time sustainability coordinator and a carbon footprint audit.

Patrick Grant stated he would like to speak later due to technical difficulties. Grant stated he does support a full-time sustainability coordinator and a carbon footprint audit.

Jack Miller stated the parking on Mathilda Avenue and El Camino Real is the same as it was forty years ago. Miller stated there are parking lots on both sides of these roads, more appropriately called expressways, and he does not understand why parking is still allowed. Miller spoke of concerns over parked cars that often open their doors into the bicyclist riding alongside in the bike lane. Miller stated he supports the elimination of parking from Mountain View to Lawrence Expressway and Mathilda Avenue to Lockheed.

Vice Mayor Hamilton stated she will consider Miller's request for Mathilda; however, she will not be able to consider a change to El Camino as it is a county roadway and the City does not have jurisdiction over that space.

PUBLIC HEARINGS/GENERAL BUSINESS

- 2. RTC 08-157 Consider Approval of FY 2008/09 Action Plan: Recommendations for Funding of Community Development Block Grant (CDBG) and HOME Funds**

Housing Programs Analyst Katrina Ardina presented the staff report.

Vice Mayor Hamilton verified that there is nothing in the contract that legally obligates the City to fund a certain amount and the agencies are aware that the amount funded is based on what the City has available. Director Hom explained that the City does not offer any commitment as to whether the funding would be the same amount for the second year. Director Hom stated the Housing and Human Services Commission's opinion was that the City has a moral obligation to continue the same level of funding for each agency during the second year, based on the City's original commitment. Vice Mayor Hamilton expressed that Council would certainly like to offer that; however, the City's economic reality must be considered.

Councilmember Whittum verified that staff is proposing to fund \$200,000 in Home Investment Partnerships Act Program (HOME) funds as a loan to Maitri, a non-profit agency, for the acquisition of an eight bedroom transitional house.

Councilmember Whittum inquired if there are unspent capital funds that could be used for curb ramps and Analyst Ardina explained that Community Development Block Grant (CDBG) funds are eligible to fund the curb retrofits. Councilmember Whittum verified that all of the CDBG programs are allocated to activities. Director Hom explained that Council does have the option to reduce funding for one and increase funding for another.

Councilmember Whittum questioned if the exterior paint program is lead hazard abatement or neighborhood preservation. Analyst Ardina stated the rehab program covers costs associated with lead-based paint depending on the age of the home.

Councilmember Whittum questioned how much of the \$100,000 that is programmed for home access, paint and emergency programs is for exterior paint jobs. Analyst Ardina responded that the majority of the funds are used for home access and not painting.

Councilmember Whittum questioned whether the proposed reductions in funding to Project Sentinel and other items will come back to Council during the budget workshop along with the option of restoring funding through the General Fund. Analyst Ardina explained that the request to fund the \$53,182 shortfall involved mainly human services; however, Council could also consider funding the additional shortfall in fair housing services. Councilmember Whittum verified that the shortfall of \$53,182 does not include funding for Project Sentinel.

City Manager Chan verified that it is possible for Council to fund the \$53,182 shortfall from the General Fund as part of the upcoming budget consideration; however, that would not be staff's recommendation. City Manager Chan explained that funding this shortfall has been recommended by the Housing and Human Services Commission, not City staff.

Councilmember Whittum verified with Analyst Ardina that the interest received on the City's Housing Fund goes back into the Housing Fund.

Councilmember Whittum verified Analyst Ardina that the transitional housing service that the non-profit agency, Matri, provides is open to everyone as long as they are income eligible.

Councilmember Whittum inquired as to what the City is doing to provide more low income and senior housing. Director Hom stated that there are a couple of projects in the works which mainly include the use of housing mitigation funds. Staff plans to come before Council in the near future with a proposed housing strategy outlining the various sources of housing

and human services funding; projections for potential future redevelopment set-aside funds, and a proposed 20-year forecast.

Councilmember Howe verified with Director Hom that staff is closely looking at the Fair Oaks Garland Senior Housing project, which would require both HOME funds and a significant amount of housing mitigation funds. Councilmember Howe verified with Director Hom that due to HOME funds being fairly limited, possible funding sources in the future could include housing mitigation funds, redevelopment set-aside funds and attempts to leverage funds with non-profits in order to obtain additional state tax credit financing or other Housing and Urban Development (HUD) programs. Staff will continue to review how the City can best leverage their funds to gain additional assistance through other sources.

Councilmember Howe inquired if HOME funds can be used for down payment assistance for very low income individuals and rental deposits. Director Hom explained that HOME funds are limited to the rehabilitation and production of new affordable housing. These funds are more restricted than CDBG Funds.

Public hearing opened at 8:32 p.m.

Florence Tindle, Vice Chair of Housing and Human Services Commission, explained that she is filling in for the Chair who was unable to attend the Council meeting. Tindle explained that the members of the commission have acknowledged the reduction in funding, however, they support maintaining current FY 2007/08 funding levels because the needs are truly unfulfilled for an underserved community. Tindle explained that the commission's recommendation to fund the shortfall was due to what they viewed as a moral obligation on the City's part based on the two-year cycle which implied equal funding for both years.

Ann Marquart, Executive Director for Project Sentinel, thanked Council for their past support. Marquart stated she is seeking Council's support for fair housing services because they have been recommended to receive a 30 percent cut in funding.

Public hearing closed at 8:37 p.m.

MOTION: Councilmember Swegles moved and Councilmember Howe seconded to approve Alternative 1: Council approves the Housing and Human Services Commission (HHSC) and staff recommended Action Plan of FY 2008/09 and appropriate \$1,962,508 in CDBG funds and \$1,267,917 in HOME funds (Attachment A).

VOTE: 7-0

3. RTC 08-140 Roadway Reconfiguration Guidelines for Retrofitting Streets with Bike Lanes (Originally Titled *Policy for Allocation of Street Space*) – Study Issue. Revised Policy Recommendation

Transportation and Traffic Manager Jack Witthaus presented the staff report.

Vice Mayor Hamilton verified with Manager Witthaus that the guidelines will mainly apply to arterials and collector streets.

Councilmember Whittum verified with Manager Witthaus that persons with disabilities are included with bicyclists, pedestrians, and motor vehicles, as mentioned in the first paragraph of the proposed policy, Attachment B.

Councilmember Whittum verified with Manager Witthaus that Council has the option to consider reasonable accommodations for parking in certain situations where parking has been removed from the street.

Public hearing opened at 8:45 p.m.

Linda Eaton asked Council for their support of the proposed policy on allocation of street space.

Kevin Jackson, Bicycle and Pedestrian Advisory Commission Chair, stated the proposed policy received unanimous support from members of the commission. Although, the policy does not include everything that the commission wanted, it is a big step forward in making pedestrian and bicycle safety more visibility without mandating any particular outcome.

Richard Withers, spoke in support for the proposed policy.

Patrick Grant gave a presentation on the benefits of walking and bicycle riding along with the importance of improving bicyclist safety and traffic improvements.

Patrick Walz expressed his support of the proposed policy. Walz stated the way to increase ridership is to make it safer and more accessible.

Craig Horne, member of Cool Cities Team, expressed support for the proposed policy.

Barbara Fukumoto stated she enjoys riding her bike, but would like it to be safer.

Public hearing closed at 8:58 p.m.

MOTION: Councilmember Moylan moved and Councilmember Lee seconded to approve Alternative 1 and 3:

Alternative 1: Council approves the policy on allocation of street space as described in Attachment B, and directs staff to prepare a General Plan Amendment to incorporate the proposed street allocation policies into the Land Use and Transportation Element of the General Plan, and

Alternative 3: Council directs staff to develop action strategies for improving engagement of the bicycling community when developing bicycle improvement projects, consistent with Community Engagement Sub-Element policy.

Councilmember Moylan acknowledged and praised BPAC for making the distinction between transport modes and non-transport modes and for originating this policy idea themselves. Councilmember Moylan stated this policy will assist Council when they are reviewing tight spaces for City streets.

Councilmember Lee expressed support for the policy. Councilmember Lee stated it is important to remember that everyone shares the roadways and the proposed policy will make the cycling safer in the City. Councilmember Lee thanked staff and BPAC members for assisting in bringing this item forward successfully.

Vice Mayor Hamilton stated she will be supporting this motion as it addresses her concerns over the previous version of this policy. Vice Mayor Hamilton stated that this policy gives Council more flexibility in determining what will work best for a particular situation or

neighborhood. Vice Mayor Hamilton stated adopting this policy is a first step; however, more needs to be done such as offering driver education along with other programs. Vice Mayor Hamilton thanked BPAC for their work on the policy.

Councilmember Swegles inquired if staff could look into having showers available that Council could use if they wanted to ride their bike to the Council meetings. Councilmember Swegles thanked BPAC for bringing this policy before Council.

VOTE: 7-0

4. RTC 08-154 Review and Approval of the Position Profile for the New Sunnyvale City Manager

Director of Human Resources Erwin Young introduced Bill Avery of Avery and Associates who is conducting the city manager recruitment.

Director Young presented the staff report.

Councilmember Whittum recommended changing the requirements to remove "four year" from the degree requirements and instead state that the position requires a degree in Public Administration, Business Administration or related field, which would allow an applicant to have a different undergraduate degree.

Councilmember Whittum suggested removing "city's" from the reference of Baylands Park on page 1 of the proposed job announcement. Councilmember Whittum stated the park is a county park.

Councilmember Whittum suggested correcting the last sentence of paragraph 2 on page 3 of the proposed job announcement under the *Ideal Candidate* section because it requires experience in effective relationships with city councilmembers. Councilmember Whittum suggested a change to this section because it is clear later in the job announcement that someone with public entity experience, other than a city, would be considered. Councilmember Whittum suggested the following change, as highlighted and by use of a strikethrough to this section:

In addition, the new Manager must have a reputation of success in complex and fast-paced organizations, as well as a history of building effective relationships; ~~with the City Council members; key to that success will be a proven track record of keeping the Council~~ **and a proven track record of keeping elected officials** collectively informed of all relevant issues and concerns.

Councilmember Whittum suggested the following change shown by a strikethrough to the last paragraph, last sentence under *Ideal Candidate* section on page 3.

Candidates with experience managing a large and sophisticated public entity ~~as a City Manager, Assistant City Manager or Executive Director~~ are highly encouraged to apply.

Vice Mayor Hamilton explained that she is the Chair of the subcommittee assisting with the oversight of the city manager recruitment and selection process. Vice Mayor Hamilton stated there is a distinction between elected officials and councilmembers because City Council is the hiring group for this position.

Vice Mayor Hamilton stated the committee agreed that the wording "related field" under the four year degree section would cover other degrees that might be relevant. Councilmember Whittum stated his concern is whether the current language will attract a wide-enough group of applicants.

Public hearing opened at 9:13 p.m.

Werner Gans stated he submitted a list of ten attributes for the city manager profile, however, two attributes did not make it into the profile. Gans explained that the two missing attributes suggest that the applicant should have California government experience and should also understand Sunnyvale's way of doing business from both the finance and management perspectives.

Councilmember Moylan explained that the section in the job announcement about the City of Sunnyvale is intended to show at length what is unique about the City of Sunnyvale as Gans suggested.

Public hearing closed at 9:15 p.m.

MOTION: Councilmember Lee moved and Vice Mayor Hamilton seconded to approve Alternative 1: Council reviews, provides input and approves the position profile for the new Sunnyvale City Manager developed by Mr. Avery and reviewed by the City Council subcommittee.

Councilmember Lee explained that Council has two employees, the city manager and the city attorney. Councilmember Lee stated hiring the right city manager is very important to the future of the City. Councilmember Lee thanked the subcommittee for their hard work in putting the city manager profile together and also thanked Mr. Avery for his outreach efforts.

Vice Mayor Hamilton echoed Councilmember Lee's comments.

Mayor Spitaleri thanked the subcommittee and the consultant for their hard work drafting the city manager profile.

VOTE: 7-0

5. **RTC 08-132 2007-0065 – Applicant appeal of a decision of the Planning Commission to deny an application for 688 Conway Road (near Hollenbeck Avenue) in an R-2 (Low-Medium Density Residential) Zoning District. Design Review to allow a new two-story single family residence for a total of 3,448 square feet and 62.9% FAR (Floor Area Ratio) where 45% FAR may be allowed without Planning Commission review.**

Assistant Planner Noren Caliva presented the staff report.

Councilmember Whittum inquired how staff has dealt with the three concerns expressed by the neighbor during the Planning Commission meeting. The neighbor had concerns over the proposed home shading their bedroom window and having seven windows face their home. The neighbor also requested to have a fence built before the construction, noise, and dust from this project commences.

Assistant Planner Caliva responded that one of staff's recommended conditions of approval is to limit the size of the second story window in order to meet the minimum requirement for egress. Councilmember Whittum verified that the home will still have seven windows facing the home and that the bedroom window will be shaded. Assistant Planner Caliva explained that the City has a requirement that windows are not shaded more than 10 percent by the neighbor's roofline. The roofline for this proposal meets that requirement as it creates a little less than nine percent shading of the neighbors window.

Public hearing opened (time not recorded)

Dave Strigler, applicant, explained he has worked with staff to incorporate all of the staff recommendations and it is his opinion that the home will now be compatible with the neighborhood.

Mayor Spitaleri questioned Strigler as to whether he had incorporated all the recommendations staff had requested. Strigler stated he started this process a year and a half ago and he has incorporated all the recommendations from staff; however, during the Planning Commission meeting, a few additional items came up which he has agreed to do. Strigler stated his design is compatible with the surrounding homes but the Planning Commission has stated that the other streets were developed over the past twenty years; whereas, his street was not. Strigler stated even homes that were approved a few years ago would not be approved now because the Planning Commission has continual change in its membership. Strigler stated he would adhere to whatever standards are set, but he is anxious to begin his project. Strigler stated to start this process all over again is not an option.

Councilmember Howe verified that this project is the same as when it went before the Planning Commission except for a few items that were added to the conditions of approval. Assistant Planner Caliva stated a few additional conditions of approval were added to address the massing and the bulk issue of the home. Councilmember Howe verified with staff that the additional conditions of approval were added after the Planning Commission denied the project. Councilmember Howe questioned if staff believes that the Planning Commission would change their vote if they were able to review this project with the additional conditions of approval. Assistant Planner Caliva explained that the concerns expressed by the Planning Commission included the size of the home and the square footage.

Councilmember Moylan explained that Strigler is asking for a home that is 5.8 times larger than his current home which would also make it the largest home on the street. Councilmember Moylan stated that the Planning Commission had a concern over the proposed project because it did not respect the scale and bulk of the other homes on the street. Councilmember Moylan explained that in order for Council to grant this design, Strigler would need to convince Council that his home does meet the scale and bulk of the surrounding homes. Strigler responded that he would be willing to reduce the size of his home to be comparable with the other two homes that were recently approved. Councilmember Moylan suggested Strigler return with a revised plan per his agreement to scale down the size of his home. Strigler explained that the reduction would be 180 square feet and if he would have known soon enough, he would have brought a scaled down plan to the Planning Commission.

Councilmember Moylan stated the other finding that the Planning Commission could not make was in reference to the design of the front of the home in which the garage covered

most of the front of the home. Strigler stated the lot is very narrow and he was trying to include a door, window and garage to give the illusion that there was less garage space. Councilmember Moylan verified that Strigler's response to the Planning Commission not making the finding is that he has minimized the obtrusiveness of the garage as much as possible considering the narrow lot restrictions. Strigler stated some accommodation should be made for narrow lots.

Vice Mayor Hamilton verified with staff that none of the conditions of approval as stated in the staff report have been included in the attached home plan.

Vice Mayor Hamilton verified with Strigler that he agrees with the conditions of approval.

Director Hom explained that this project has been under design review for quite some time with staff expressing concerns over the size of the house and the architectural design features. Director Hom stated regardless of what the staff recommendation on the project was, this project eventually had to go before the Planning Commission due to the floor area ratio (FAR). Staff did recommend to the Planning Commission that a number of design issues could be resolved with design revisions. Director Hom stated the Planning Commission still had concerns over the massing of the house, the architectural design, the size of the house, and compatibility within the neighborhood. The Planning Commission recommended denial of the project with the need to redesign the home because of the significance of the issues. Director Hom stated staff has added additional conditions which might address the Planning Commission's concerns should Council wish to grant the appeal; however, ultimately it is staff's recommendation to deny the appeal and uphold the decision of the Planning Commission. Director Hom stated this project should really go back to the Planning Commission for further review.

Vice Mayor Hamilton stated the staff recommendation on the staff report is incorrect on page 15 of the report as it states the staff recommendation is for Alternative 1 and it should state Alternative 3.

Mayor Spitaleri verified with staff that this project went through three revisions. The first proposal had a 72 percent FAR which was then reduced to 62 percent and then further reduced to 60 percent FAR. Mayor Spitaleri inquired why the project stopped at 60 percent FAR and Director Hom stated rather than require the applicant to do another round of further revisions, staff decided to let the Planning Commission weigh in on the project. Director Hom stated despite adding the conditions of approval, the Planning Commission was not comfortable in approving the design given the outstanding issues with the design.

Strigler stated if he had known prior to the Planning Commission meeting that the members wanted his project reduced further, he would have done that prior to the meeting.

Paul Qiam stated he is Strigler's neighbor. Qiam stated a large home is already on one side of his property with windows that face his home. Qiam is concerned over Strigler building a large home on the other side of his property which will also have many windows facing his home. Qiam stated the Planning Commission has admitted that they made a wrong decision in approving the existing home next to his property. Qiam thanked staff for their help with this issue.

Public hearing closed at 9:53 p.m.

Councilmember Howe inquired if Council denied the appeal and sent the project back to the

Planning Commission, would the applicant have to pay the fees again. Director Hom stated if Council does not want the applicant to pay additional fees, then Council could deny the appeal and return the item to the Planning Commission with directions as appropriate for redesign. Director Hom explained that if the applicant did not agree to a redesign, then Council's option would be to deny or approve the project this evening. Councilmember Howe verified with Director Hom that the applicant would have to concur with having his project return to the Planning Commission for redesign.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded to approve Alternative 3: Council denies the appeal and upholds the decision of the Planning Commission to deny the Design Review, and provide direction on future designs **with the following directions:** return this item to the Planning Commission; FAR shall not exceed 55 percent; there shall be a provision for privacy for the neighbors; the design and mass need to be worked on; clarification that this gives the Planning Commission the ability to deny the project if they choose, and the applicant shall decide within the next 15 days if he wants to go forward with this project, as stated, in a written letter to the Director of Community Development

Director Hom clarified that his understanding is that if the applicant comes back to staff in 15 days stating that he cannot accept 55 percent FAR, then that will signify denial of the application. Councilmember Howe verified that the intent of his motion would be to deny the appeal and close the application if the applicant does not accept the terms as stated in this motion.

Restated MOTION: Councilmember Howe moved and Councilmember Swegles seconded to approve Alternative 3: Council denies the appeal and upholds the decision of the Planning Commission to deny the Design Review, and provide direction on future designs **with the following directions:** return this item to the Planning Commission; FAR shall not exceed 55 percent; there shall be a provision for privacy for the neighbors; the design and mass need to be worked on; clarification that the Planning Commission has the ability to deny the project if they choose, and the applicant shall verify, within the next 15 days, whether or not he wishes to proceed with this project, as it is stated, by submittal of a written letter to the Director of Community Development **with** if the applicant informs staff within the allotted 15 days that he cannot accept the 55 percent FAR, then that will signify denial of the appeal and will close out the application.

VOTE: 7-0

6. RTC 08-158 Council Intergovernmental Committee Appointment to the Water Emergency Transportation Authority Citizen Advisory Committee

Intergovernmental Relations Officer Yvette Agredano presented the staff report.

Councilmember Swegles explained that he previously served on this committee and offered an explanation of the importance to have the City's representation on this committee.

Councilmember Whittum stated he will volunteer to serve on this committee.

Public hearing opened at 9:58 p.m.

No speakers.

Public hearing closed at 9:58 p.m.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded to approve Alternative 1: Council appoints a Councilmember and alternate to the Water Emergency Transportation Authority Citizen Advisory Committee
with Council appoints Councilmember Whittum as the committee member.

Councilmember Swegles stated when he served on this committee he thought his alternate was a staff person. Councilmember Swegles questioned whether the alternate could also be a staff person for this appointment.

Manager Agredano stated she did not have that information.

Vice Mayor Hamilton suggested the mayor appoint an alternate at a later time.

Manager Agredano explained staff has listed this appointment as a Council appointment and she is not sure how appropriate it would be to have the mayor appoint the alternate.

Councilmember Whittum stated he is aware that another city has a commission member serving as the alternate.

Councilmember Lee offered to serve as the alternate on this committee.

Councilmember Howe stated he would change his motion.

Restated MOTION: Councilmember Howe moved and Councilmember Swegles seconded to approve Alternative 1: Council appoints a Councilmember and alternate to the Water Emergency Transportation Authority Citizen Advisory Committee
with Council appoints Councilmember Whittum as committee member and Councilmember Lee as the alternate committee member.

Councilmember Moylan requested that the mayor place on a future agenda the appointment of an alternate to the County Emergency Preparedness Council, because that position is open. Mayor Spitaleri agreed.

City Manager Chan stated this item has already been scheduled.

VOTE: 7-0

Mayor Spitaleri stated an alternate is being sought for the Association of Bay Area Governments (ABAG) Board. Mayor Spitaleri requested that if any Councilmember would like to serve in this position to let him know prior to the City selection meeting.

CONTINUED PUBLIC COMMENT

Patrick Grant presented an audio presentation (inaudible). Grant stated the message was from a Stanford professor concerning California's attitude and policies.

NON-AGENDA ITEMS & COMMENTS

COUNCIL: Councilmember Lee inquired if additional board and commission applications have been received in the Office of the City Clerk. City Clerk Gail Borkowski verified that an additional application was received a few days ago. Councilmember Lee inquired whether this applicant would be scheduled for an interview and City Clerk Borkowski stated that no direction was given to set an interview and therefore, an interview has not been scheduled.

Councilmember Lee inquired if there was a cutoff date for applications and City Clerk Borkowski explained that there was an advertised date of April 11, 2008 for receipt of applications. The interviews scheduled for May 15, 2008, are for applicants in which the Office of the City Clerk received their applications during the week following the deadline of April 11, 2008. City Clerk Borkowski explained that the mayor directed staff to schedule interviews for these three applicants. Councilmember Lee verified that no interview date has been scheduled for the applicant who submitted an application a few days ago. Councilmember Lee requested that this late application be added to the May 15, 2008 interviews. City Clerk Borkowski explained that staff would need direction from the mayor and that at this point the time scheduled would not allow for an additional interview.

City Manager Chan explained that the mayor agreed to interview the three late applications prior to last week's study session. City Manager Chan stated later during the study session, Council agreed not to hold interviews for late applicants, but to include late applications in the application binder for Council's consideration. City Manager Chan requested Council notify staff if they have a different understanding of the procedure than what was expressed during the study session.

Councilmember Lee suggested that staff add the recently received late application to the other three late applications in order that Council may interview all late applications at the same time. Mayor Spitaleri explained that when he made the decision to interview the three late applications, he stated those would be the only late applications he would accept and he is standing by his decision.

Councilmember Lee inquired if Council is able to vote on applicants that have not received an interview. City Manager Chan explained that an interview is not required for Council to make appointments to the City's boards and commissions. City Manager Chan stated that Council's application binder will include all applications received prior to the appointment date regardless of whether the applicant was interviewed or not. City Manager Chan stated if Council decides to hold late applications until the next recruitment, then staff will comply.

Mayor Spitaleri questioned the process of allowing late applications to be considered by Council without having an interview. Mayor Spitaleri questioned why Council holds interviews if they are not necessary for the appointment process. Mayor Spitaleri stated if it is part of the policy to add these additional late applications to the application binder, then so be it, but he does not see any sense in doing that.

Councilmember Whittum verified that any late applications received will be included in the binder for Council's consideration.

STAFF: None.

INFORMATION ONLY REPORTS/ITEMS

- Tentative Council Meeting Agenda Calendar
- Draft Minutes of the Board of Library Trustees Meeting of May 5, 2008
- RTC 08-153 Opportunity for Council to Appeal Decisions of the Planning Commission Meeting of April 28, 2008 and the Administrative Hearing of April 30, 2008
- Study Session Summary – Boards and Commissions Update of May 6, 2008
- Draft Minutes of the Boards and Commissions Interviews of April 30, 2008
- Draft Minutes of the Boards and Commissions Interviews of May 1, 2008
- Draft Minutes of the Boards and Commissions Interviews of May 5, 2008

ADJOURNMENT

Mayor Spitaleri adjourned the meeting at 10:14 p.m.

Gail T. Borkowski
City Clerk

Date