

**APPROVED MINUTES  
SUNNYVALE CITY COUNCIL  
TUESDAY, SEPTEMBER 9, 2008**

**5 P.M. SPECIAL COUNCIL MEETING (Study Session) - Parks of the Future Study**

**7 P.M. COUNCIL 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 Human Resources Erwin Young  
Housing Officer Laura Simpson  
City Clerk Gail Borkowski

**PUBLIC ANNOUNCEMENTS**

Councilmember Swegles announced the Mayor's address at the 2008 State of the City event on September 13, 2008.

Councilmember Swegles announced an upcoming series of free parent workshops.

Councilmember Swegles announced that the city accepts applications for all boards and commissions on a continuous basis and announced the current openings on the City's boards and commissions.

Jeanine Stanek, representing the Historical Society, announced the upcoming Heritage Park Museum grand opening.

**CONSENT CALENDAR**

Councilmember Whittum pulled Item 1.D.

Councilmember Howe pulled Item 1.A.

Vice Mayor Hamilton moved and Councilmember Howe seconded to approve the Consent Calendar with the exception of Items 1.A and 1.D.

VOTE: 7-0

**1.A. MOTION Approval of Draft Minutes of August 19, 2008**

Councilmember Howe verified with the city clerk that Attachment A was inadvertently not attached to the minutes.

Public comments opened at 7:13 p.m.

No speakers.

Public comments closed at 7:13 p.m.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded to continue the Draft Minutes of August 19, 2008 to September 16, 2008 for approval with Attachment A included.

VOTE: 7-0

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

**Fiscal Items**

**1.C. RTC 08–263 List of Claims and Bills Approved for Payment by the City Manager – List Nos. 416 and 417**

Staff Recommendation: Council reviews the attached lists of bills.

**1.D. RTC 08–253 Approval of Budget Modification No. 6 to Appropriate \$20,000 from the City Housing Mitigation Sub-Fund Reserve to Support Housing Predevelopment Activities for FY 2008/2009**

Councilmember Whittum stated he pulled this item in order to have a discussion about the noise and emissions at this site and for staff to comment on the possibility that this site exceeds the City's guidelines for residential use. Councilmember Whittum stated his concern is over having seniors living at this location without useable outdoor space and asked staff to comment. Councilmember Whittum also asked staff to comment on other uses that might be better suited to the area such as a Santa Clara Valley Transportation Authority (VTA) park and ride, or a gas station with food sales. Councilmember Whittum inquired if this site should be reviewed by the Planning Commission to look at possible uses for this site and asked staff how the City is going to meet the Housing and Urban Development (HUD) guidelines for noise and particulates. Director of Community Development Hanson Hom explained that sites located near freeway locations routinely face issues such as air quality and noise. Staff has not performed the analysis needed to identify ways to mitigate the issues; however, an in-depth environmental analysis will be completed should this project move forward. Director Hom explained that the residential buildings could be screened so they are not facing the freeway in order to assist with open space issues. Director Hom stated staff could also check with the VTA to determine if the

site might be a viable site for a park and ride.

Councilmember Whittum inquired if food sales could be combined with this project. Councilmember Whittum inquired whether staff feels they are able to consider the best use of the land without Council action. Director Hom stated this area is zoned industrial so any other use would need to be a land use and zoning change for the property.

Councilmember Swegles explained that a large grocery center is being added to the area at Tasman and Fair Oaks. Councilmember Swegles explained he does not see the noise issue as being a problem, because he knows people living in that area without noise mitigation efforts such as double pane windows; however, they do not have an issue with the noise factor. Director Hom added that the building code requirements would mitigate at least interior noise levels to minimum standards. Director Hom explained that this location is appealing for residential units because of its close proximity to the transit station.

Public comments opened at 7:21 p.m.

No speakers.

Public comments closed at 7:21 p.m.

MOTION: Councilmember Howe moved and Councilmember Moylan seconded to approve Alternative 1: Council approves Budget Modification No. 6 to appropriate \$20,000 from the Housing Fund/Housing Mitigation Sub-Fund Reserve to support the costs of professional services and appraisal costs for the property at 1240 Fair Oaks at Route 237 and other potential housing opportunity sites.

Councilmember Moylan offered a friendly amendment to have staff check with VTA to see whether an alternative use of a park and ride site can be explored.

Friendly amendment accepted.

Restated MOTION: Councilmember Howe moved and Councilmember Moylan seconded to approve Alternative 1: Council approves Budget Modification No. 6 to appropriate \$20,000 from the Housing Fund/Housing Mitigation Sub-Fund Reserve to support the costs of professional services and appraisal costs for the property at 1240 Fair Oaks at Route 237 and other potential housing opportunity sites.

**with** Council directs staff to check with the VTA to see if an alternative use of a park and ride site can be explored.

VOTE: 7-0

### **Contracts**

**1.E. RTC 08-266 Rejection of Proposals for Property Management Services for the Fair Oaks Industrial Complex (F0705-96)**

Staff Recommendation: Council rejects all proposals received in response to Request for Proposals No. F0705-96 for the Annual Property Management Services for the Fair Oaks Industrial Complex.

**1.F. RTC 08-262 Agreement Between the City of Sunnyvale and Junior Achievement of Silicon Valley and Monterey Bay for K-12 Work Readiness and Economics Education**

Staff Recommendation: Council approves the Agreement between the City of Sunnyvale and Junior Achievement of Silicon Valley Monterey Bay for \$10,740, depicted by Attachment A, to provide work readiness and economics education for students K-12 grades and authorizes the City Manager to enter into said Agreement.

**1.G. MOTION Agreement Between the City of Sunnyvale and Silicon Valley Leadership (Formerly Leadership Sunnyvale) to Provide Leadership Sunnyvale Training Program  
RTC 08-269**

Staff Recommendation: Council approves the two-year Silicon Valley Leadership Agreement to provide leadership training via the Leadership Sunnyvale program, to the Sunnyvale community, and authorizes the City Manager to enter into said Agreement.

**STAFF RESPONSES TO PRIOR PUBLIC COMMENTS**

None.

**PUBLIC COMMENTS**

Nancy Silva stated she has sent several e-mails to Council regarding her drainage issue. Silva stated she received an email from City Attorney David Kahn stating that her drainage issue is closed and is a civil matter between herself and her neighbors. Silva stated this is a violation of City code and she would like to discuss her views on this matter as her home and retirement income are at risk. Silva requested that at least one Councilmember contact her.

Councilmember Whittum disclosed he has visited with Silva previously. Councilmember Whittum verified with Silva that it is her opinion the Best Management Practices (BMPs) are flawed and the City is responsible for amending the flawed BMPs.

Silva stated that staff from the planning and building departments has looked into this issue and they identified that the BMPs are not working.

Councilmember Howe disclosed that he lives within 500 feet of the subject property so he will not participate in any decisions on this issue.

Councilmember Whittum stated there is a question as to whether the BMPs are adequate or not; however, if they are inadequate, who is responsible for addressing that and how would staff find out that they are inadequate. Director Hom stated that detailed plans are reviewed during the building permit stage for compliance with the BMP measures. The plans are reviewed and approved by the City and during the inspection process, the project is inspected to confirm compliance with BMPs. Director Hom explained that there have been contentions that the BMPs were not met on this property since 2006. There have been subsequent investigations and follow up by staff to determine whether the BMPs were in compliance with the City's requirements. Director Hom stated some adjustments were made to the site drainage; however, after extensive site review staff determined that the three lots in question do drain properly and they do comply with the City's ordinance and BMP guidelines. Director Hom continued his explanation by stating that the

disagreement lies with whether the sites truly do comply with the City's guidelines and it is the City's opinion that they do comply.

Councilmember Whittum questioned whether staff is stating that Silva's backyard will not flood when it rains. Director Hom stated that the drainage on the adjacent properties will positively carry the rain to the street and not to adjacent properties, but that does not mean that Silva's property does not have drainage problems itself.

City Attorney David Kahn stated there are a number of other reasons other than drainage as to why a property might flood, which would be related to conditions existing on that particular property. City Attorney Kahn stated that there have been extensive site investigations and determinations have been made that the BMPs are correct, the adjacent properties are in compliance, and any residual problem would be attributable to soil conditions at the subject property. City Attorney Kahn explained that he is aware that at one time there was a settlement agreement with the adjacent developers to make some engineering changes to the drains on Silva's property, but for unknown reasons that agreement was never accepted. Councilmember Whittum explained that the developer wanted to place a pump on her property and Silva objected, because she never needed a pump prior to the development.

Silva stated the BMPs being discussed are not the same as the ones that were suggested in the storm water management plan, which were specific to the development site.

Gil Tarabanovic stated Council made a decision in April 2008 to have a fence removed as it was on City property. The deadline for removal was 120 days and that date is now up; yet nothing has been done about removing the fence. Tarabanovic inquired as to why this fence has been able to remain after the Council made a decision and set a deadline. Mayor Spitaleri stated he will direct the city manager to prepare a response and report back at a future Council meeting, under staff responses to public comments.

Tarabanovic stated he made a complaint to the neighborhood preservation department about this issue and was told that citations are issued for non-compliance. Tarabanovic questioned whether continuing to issue fines for non-compliance is really effective, because it appears that fines are ignored and the issues remain.

## **PUBLIC HEARINGS/GENERAL BUSINESS**

### **2. RTC 08-271 Consideration of Policy to Require All City Employees Funded by Grants to be Designated as Temporary/Contractual [Study Issue]**

Director of Human Resources Erwin Young presented the staff report.

Councilmember Moylan verified that under this proposal, a person who has been working for the City through grant-funding would retain the credit for their time with the City, should they receive a regular position.

Vice Mayor Hamilton verified with Director Young that a temporary status employee is someone who is hired on an hourly basis and does not receive benefits. Vice Mayor Hamilton verified with Director Young that as long as someone works less than 900 hours in a fiscal year, they could maintain a temporary status. However, if a position is more than half-time for over a year, that position would then be represented by a bargaining unit and would receive benefits. Director Young explained that it is the position not the person that

would be affected and should the position become a benefited position, the incumbent employee would need to compete for the position.

Councilmember Whittum verified with Director Young that the City has 40 NOVA grant-funded employees and approximately six grant-funded positions in the community development department.

Councilmember Whittum verified with Director Young that once a grant-funded employee reaches a year and a day of working for the City, the position would become represented by a bargaining unit and the person working in that position, would need to go through a selection process.

Councilmember Whittum verified with Director Young that prior to approaching the year, if a manager has a grant-funded employee, their manager would perform a review with the employee.

Councilmember Whittum verified with Director Young that the bargaining units are concerned that employee rights be maintained and that long-term temporary employees become part of a bargaining unit and have the same rights as other City employees.

Councilmember Whittum questioned Director Young as to the downside of Alternative 1, which would not offer any changes to grant-funded employment. Director Young stated that the downside is that currently formal Council action is needed to layoff grant-funded positions, which were limited to start with. Current practice is that any layoff action affects current employees as they will be bumped by laid-off employees should they wish to do a lateral transfer for an open position.

Mayor Spitaleri inquired what would occur if a grant-funded position lasted more than a year, and the person working went through the competitive process and was selected for the position, but then the funding went away. Director Young stated in that situation, the person would be laid off, but they would know in advance that the position was grant-funded and that the City had the authority to lay them off.

Vice Mayor Hamilton inquired as to what the normal length of a grant would be and Director Young stated that a number of NOVA employees have worked for 15 to 20 years based on renewable grants. Staff is going to be making some decisions that are based on expecting the grants to be extended.

Vice Mayor Hamilton questioned if the term of a grant is for only one-year, and a person is hired as a temporary person; however, if the grant is available the following year, would that same person have to go through a competitive process for essentially the same job they just completed, which was grant funded and if hired, would they then be a temporary employee for another year? Director Young stated that if the person went through the competitive process, they would not necessarily be a temporary employee, they would be a regular employee with a grant-funded status.

Vice Mayor Hamilton questioned if Director Young is basically saying that if the grants are all only one year, then everyone hired as a grant-funded employee will be considered a temporary employee for a year. Director Young stated that was not the case because if the City knows it is going to get continued funding for an extended period of time, the City would make the decision to hire those employees right away as regular employees. However, if

something were to happen, then the City would have to go through a layoff process. Director Young gave an example of a two year grant in which the City would hire someone as a regular employee and the person would know coming in that they have a two year status and could be laid off at the end of the grant, if it was not renewed.

Councilmember Swegles verified that the City's long-term grant-funded employees, along with the City, do contribute to the City's retirement system and are entitled to retirement just like any other employee with the proper years of service.

Mayor Spitaleri verified that a grant-funded employee is eligible to serve on the bargaining unit and that the bargaining unit can negotiate terms and conditions for grant-funded positions.

City Manager Chan clarified that a temporary employee is someone who works for a year or less. Generally, the City will know whether a grant will continue more than one year. Should staff know that the grant is for less than a year, then staff will hire that person as a temporary employee without City benefits. Should staff think the grant will likely be ongoing, or that there will be a certain number of years that the grant will cover the position, then the City will hire the person as a grant-funded employee and they will be considered a regular employee for the most part and will belong to a bargaining unit and be entitled to all the benefits including retirement.

Public hearing opened at 7:57 p.m.

Curtis Black, President of Sunnyvale Manager's Association (SMA), thanked the City for allowing the other employee association's to have input on this proposal. Black explained that SMA did not get their comments to Director Young in time for the staff report. Black stated the association is concerned that approval of this policy could make it difficult to attract long-term employees. Black stated most grants are for twelve months; therefore, the majority of these positions will be non-benefited. Repeated grants would not result in regular full-time positions, rather more temporary positions. SMA requests that if these classifications are approved, that all employee associations have an opportunity to provide input in creating the new specifications for these employees.

Councilmember Swegles explained that Council is attempting to address layoffs and to be fair to individuals when they are hired, letting them know that they could possibly be working for a short time. Black stated he does understand the issues involved with work force reduction; however, the association is concerned that the policy could result in none of the grant-funded employees receiving benefits. Black stated that the grants are not extended, rather a new grant is received; therefore, the employee would not technically be working more than a year at a time. Black stated it is the association's belief that the best employees will move on because they want to have job security.

Councilmember Whittum verified with Black that the association is concerned that as employees leave the City, each new position will likely come in as a grant-funded position without benefits. Councilmember Whittum verified with Black that SMA favors leaving the system as it is currently, and as the City encounters work force reductions, following the rules for established work force reductions and re-establishment of work force as agreed upon by the bargaining units in previous years.

Mayor Spitaleri clarified that currently if the grant continues after a year, those employees

will continue on without having to reapply for the position. Black explained while employed those employees are seeking new grants to continue their positions.

Mayor Spitaleri verified with Black that the proposed policy would require that employees who are funded by ongoing 12-month grants would need to reapply at the end of one 12-month grant. The other issue would be that each year when a grant was available, unless it was for more than one year, the applicant would not be offered a benefited position regardless of whether they had been working under previous grants. Benefits would only be offered to grant-funded positions that are for more than 12 months.

Mayor Spitaleri verified with Black that currently, grant-funded positions are hired as regular employees and they continue to seek funds to continue their positions. Mayor Spitaleri stated if grants were not available, no one would be hired.

City Manager Chan explained that if grants are available and the City knows that they are continuing, staff would not hire a temporary person; instead a grant-funded person would be hired. City Manager Chan stated if the City continues without any changes to the current practice, then regular hired employees can be bumped by the grant-funded employees with seniority. If the new policy is approved, the grant-funded employee would be informed that the length of their employment would be based on the length of the grant. An employee would receive benefits if the grant was for more than a year; however, they would not have bumping rights to a regular employee.

Black stated the SMA is concerned over creating a new class of non-benefited employees and when the details are worked out, there will be a large amount of unsatisfied employees; thereby, affecting the quality of staff.

Mayor Spitaleri inquired whether the provisions concerning grant-funded positions are contained within the collective bargaining agreements. Director Young stated staff met with Sunnyvale Employees International Union (SEIU) and Sunnyvale Employees Association (SEA) representatives and supplied them with a written document of what was going to be proposed to Council and both associations concurred with the report. Mayor Spitaleri clarified that there is not a provision in the existing Memorandum of Agreements (MOA) that addresses grant funded employees and verified with Director Young that this is new language that the City would like to receive agreement from the unions. Director Young stated the City has used this approach with the unique classifications in many of the NOVA positions, so this is not completely new territory.

Mayor Spitaleri clarified that the City has received agreement on this policy from two of the three bargaining units. Director Young stated the SMA does not have a current collective bargaining agreement. Mayor Spitaleri verified with Director Young that SMA is a collective bargaining unit and has rights to negotiation. Director Young identified that SMA does not have any existing provisions in their contract with regards to layoffs.

Black stated the other two bargaining units expressed concerns, which are contained in their report to Council.

Councilmember Swegles verified with Director Young that a grant-funded employee would always have the right to apply for a permanent position in the City.

Councilmember Swegles verified with City Manager Chan that currently if a grant-funded

employee is laid off, they can bump a regular employee who has less seniority without having to interview with the hiring manager. Currently, under the layoff process there is no interview required, unless the grant-funded person is still working under the grant and would like to request a lateral transfer to an open position. In this scenario, they would be required to interview and it would be up to the hiring manager to make the decision. City Manager Chan continued that if the grant-funded employee was not hired, then the employee would remain in their grant-funded position.

Councilmember Swegles stated the situation currently exists that if the grant-funded employee were to be laid off, they could then bump the person hired for the position they were not previously chosen for, under the current system.

Vice Mayor Hamilton verified that a grant-funded employee could be attached to multiple grants.

Councilmember Whittum asked staff to speak about Alternative 3 as to the benefits.

Mayor Spitaleri officially closed the public hearing closed at 8:22 p.m.

Director Young stated the bargaining units would be opposed to Alternative 3, which would create a temporary category of employment. Director Young stated the employee associations are primarily concerned with continued representation.

Councilmember Whittum verified that expanding the number of grant-funded positions seems limited given the limited number of grants available.

Councilmember Whittum inquired if there is a financial consequence of choosing one alternative over the other. City Manager Chan explained that Alternative 3 could potentially cost the City the least amount, because it offers the creation of a temporary category of employment in the unclassified service which would support the scope and duration of grants awarded to the City. This classification would be without benefits; thereby, saving the City the cost of offering benefits.

Councilmember Whittum verified that the current grant-funded workers have benefits. City Manager Chan explained that the proposal is to grandfather in all of the existing grant-funded employees.

Councilmember Whittum verified with City Manager Chan that given the fiscal condition at the state level, it is not likely new grant funding for positions will be available.

Councilmember Moylan disclosed that he has been contacted twice by SEIU on this issue and they confirmed that they are supportive of Alternative 2. Councilmember Moylan stated he did not hear any reservations from the SEIU representatives he spoke to regarding this alternative.

MOTION: Councilmember Moylan moved and Vice Mayor Hamilton seconded to approve Alternative 2: Council updates the Salary Resolution to include a provision that defines grant-funded employment, authorizes the creation of job classification titles that are distinct from regular classification titles, establishes the benefits for which employees would be eligible, and further defines the City's authority to terminate employment at the completion of the grant or for reduction of loss of grant funding.

**with** Staff will continue to involve the bargaining units in this process as the details are worked out.

Councilmember Moylan stated it is disturbing to hear anyone talk about a well-established layoff process, because the goal for any organization is not to layoff any employees. Councilmember Moylan explained that the way to go through the economic cycles is to either increase or decrease the number of temporary employees working for the organization. The idea behind this is that no one should be laid off by surprise. Councilmember Moylan acknowledged that when an employee knows that the end of their term of employment is coming up, they may start to look for other work; however, that is better than informing the employee they are being laid off at the last minute. Councilmember Moylan stated the current system does not treat employees in good faith because it leaves them with a false sense of security. This change will allow grant-funded employees to know when their term is up and also protects regular employees in that takes away the ability to be bumped by a grant-funded employee. Councilmember Moylan concluded by stating that everything else will stay the same with the grant-funded employee remaining in the bargaining unit and receiving all their benefits.

Councilmember Moylan explained that it is very unpleasant to have to layoff employees and it is his hope that if Alternative 2 passes, Council will not be required to do so in the future.

Vice Mayor Hamilton stated she agreed with Councilmember Moylan's comments and stated that being laid off should not come as a surprise. Vice Mayor Hamilton stated this process is not that different from what the City does now, it just makes the terms of the grants clear and eliminates the unfair advantage of bumping rights.

Mayor Spitaleri stated he will support the motion; however, he requested that the language from Alternative 2, or similar language, be incorporated into all the Memorandum of Understandings (MOU)'s, so that if a member of a collective bargaining unit who is working as a grant-funded employee will understand that they work under a different provision when it comes to layoffs, seniority and bumping rights. Without that language included in as part of the MOU's, any employee in the bargaining unit who is paying full dues would believe that they would have all the same rights as the members of the bargaining unit. Mayor Spitaleri stated it is important to include in the collective bargaining agreement that a grant-funded employee has certain rights that are not equal to their co-workers.

VOTE: 7-0

**3. RTC 08-264      2008-0489 City of Sunnyvale: Work Plan to Update Housing and Community Revitalization Sub-Element of the General Plan for 2009-2014**

Housing Officer Laura Simpson presented the staff report.

Councilmember Swegles inquired as to whom staff perceives as being part of the project team identified in Attachment A. Housing Officer Simpson explained that the team will consist of the Housing Officer as the lead, an associate planner, and additional staff as needed, including a possible representative from neighborhood preservation.

Councilmember Swegles verified with City Manager Chan that the project team will consist of staff members only.

Councilmember Howe inquired as to who generally will be invited to the community outreach meetings. Housing Officer Simpson explained that the planning and housing departments have established lists of organizations who are interested in housing issues and invitations would go out to members of those organizations. Councilmember Howe verified that notices of the community outreach meetings will also be posted on the City's website. Director Hom stated that invitations would also go out to business associations and realtor groups who are interested in housing in the City.

Vice Mayor Hamilton explained that there is a conflict between what Association of Bay Area Government (ABAG) stated the City needs to build versus the amount of open space available and questioned how the City will deal with that issue. Housing Officer Simpson explained that the City already has existing zoned land that can meet the projected goals of the current housing element update. Vice Mayor Hamilton stated the question is how will the City meet the housing goals and also meet the amenity goals that would come along with housing. Director Hom explained that the state dictates the number of housing units that the City has to plan for, not necessarily build, and this provides a challenge to cities as to how they will meet the amenities required for the new population such as schools, open space, and parks. Director Hom stated that cities must plan for the projected population and specific number of housing units.

Vice Mayor Hamilton stated the assumptions that ABAG uses are fundamentally biased toward cities that create more jobs. Vice Mayor Hamilton requested that staff include in the work plan what would happen if the City did not comply with the numbers supplied by the state. Vice Mayor Hamilton stated she would like the options of what the repercussions would be and or any options that City might have if it did not comply with the numbers required by the state included in the work plan for community input.

Director Hom stated the Land Use and Transportation Element is also currently being prepared and this will be a great opportunity to address issues from both elements and weave them together.

City Manager Chan explained that a Housing Strategies report will be coming before Council for consideration within a month and there will also be a study session held within a few weeks. Staff can provide the information that Vice Mayor Hamilton has requested in the strategy report, at which time Council can provide direction, which can be used by staff to prepare the housing sub-element.

Public hearing opened at 8:44 p.m.

No speakers.

Public hearing closed at 8:44 p.m.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded to approve Alternative 1 Council approves the proposed work plan as proposed.

Councilmember Howe thanked staff for the staff report.

VOTE: 7-0

## **NON-AGENDA ITEMS & COMMENTS**

**COUNCIL:**

Councilmember Whittum inquired as to whether the campaign finance memo issued by the sub-committee will be posted on the City's Web site in the near future. City Manager Chan stated the staff report with the memo will be posted two weeks prior to Council discussion at the Council meeting on October 7, 2008; however, Council may direct staff to post this report at anytime.

Councilmember Whittum requested to have the subcommittee memo posted on the City's Web site within a week. Mayor Spitaleri stated he objects to that request because he has questions on the memo.

Councilmember Whittum stated it is a report of the subcommittee and could be posted as an information item. Councilmember Whittum stated that once a report is circulated to all of Council, it is public at that point and posting on the City's Web site would be a convenience to members of the public.

Mayor Spitaleri verified with City Attorney Kahn that the recommendation from the sub-committee could be posted early and it does not imply that Council supports it or not. City Attorney Kahn stated that the question would be whether the subcommittee feels the report is complete or whether additional edits are needed. If it is a preliminary report, it would not be appropriate to post it on the City's Web site.

Mayor Spitaleri verified with the city attorney that although the document was posted, Council would still be subject to the Brown Act and Council would not be able to discuss it as a body until the Council Meeting at which it is scheduled for discussion on October 7, 2008.

Councilmember Whittum verified that the subcommittee is in agreement that posting this memo to the City's Web site would be acceptable.

Councilmember Whittum thanked staff for providing an article from the *San Jose Business Journal* in Council's packet, which highlighted the 25 largest auto dealers in Silicon Valley. The article included a table of the 25 largest dealers of which 20 dealers had a decrease in sales, and to the contrary, five auto dealers showed an increase in sales. Councilmember Whittum stated the article identified that the five auto dealers had an increase in sales and are located on El Camino Real, with four of the five located in Sunnyvale. Councilmember Whittum recommended that a public discussion occur about auto dealerships, because an auto mall has been suggested for the Onizuka Air Force Base. Councilmember Whittum stated it is important that the community discuss the matter of where auto dealers should be located.

Councilmember Swegles stated he will not be attending the October 7, 2008 Council meeting.

Councilmember Swegles stated there has been community discussion about the Onizuka site and it was the citizens' advisory committee who recommended an auto mall at Onizuka. Councilmember Swegles stated the auto dealers are very happy with the exposure they would get at the Onizuka location.

In reference to Council's recent action against bottled water use, Councilmember Swegles stated Council is using reusable bottles for their water consumption.

Councilmember Howe inquired whether the public financing subcommittee, consisting of Councilmember Moylan, Councilmember Lee and Councilmember Swegles, envisions that their finance report will be changed between now and when it comes to a public hearing before Council. The subcommittee agreed that they are done with the document.

Councilmember Howe requested the mayor consider moving the public campaign report from the October 7, 2008 agenda to when Councilmember Swegles can be in attendance. Mayor Spitaleri agreed. Councilmember Howe requested the mayor work with the city manager to reschedule this item.

Mayor Spitaleri stated there are statements in the subcommittee report that he does not agree with and he feels are incorrect.

Councilmember Howe suggested that a disclaimer be added to the report which states that the report does not reflect the views of City staff or the majority of the Council. Councilmember Howe stated the other option would be for the mayor to direct that the report will not be posted on the City's Web site.

Councilmember Whittum stated it is actually a public document because it has already come before all of Council.

Mayor Spitaleri stated the document contains misleading and incorrect statements within the supporting language for the recommendation.

Councilmember Swegles stated he just noticed that at the October 7, 2008 Council meeting, this item will be reviewed as a study session; therefore, he does not need to attend that meeting and suggested the mayor keep the campaign finance item on the October 7, 2008 Council meeting agenda.

Mayor Spitaleri stated he would rather see just the committee's recommendation contained in the subcommittee's report and not the supporting facts because some of the information is incorrect and some are misleading.

Councilmember Swegles requested a new agenda date for the item on the October 7, 2008 Council agenda pertaining to the number of Councilmembers needed to support a study issue. Councilmember Swegles stated he will not be available to attend the October 7, 2008 Council meeting and this item needs to be discussed and voted on by the entire Council. Mayor Spitaleri verified with the city manager that she will move the item to another agenda date and will get back to Council with the new date.

**STAFF:** None.

**INFORMATION ONLY REPORTS/ITEMS**

- Tentative Council Meeting Agenda Calendar
- Approved Minutes of Housing & Human Services Commission Meeting of July 23, 2008
- RTC 08-270 Opportunity for Council to Appeal Decisions of the Planning Commission of August 25, 2008 and the Administrative Hearing of August 27, 2008
- Study Session Summary – A More Aggressive Approach to Code Enforcement of August 26, 2008
- Draft Minutes (revised) of Parks and Recreation Commission Meeting of August 13, 2008

**ADJOURNMENT**

Mayor Spitaleri adjourned the Council meeting to a special Council meeting, Study session: Update on Downtown Capital Improvement Project at 9:01 p.m.

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Date