

**APPROVED MINUTES
SUNNYVALE CITY COUNCIL MEETING
TUESDAY, OCTOBER 14, 2008**

(Directly following this meeting, an Onizuka Local Redevelopment Authority Meeting was held.)

5 P.M. SPECIAL COUNCIL MEETING (Closed Session) - Conference with Labor Negotiator pursuant to Government Code Section 54987.6; Negotiator: Erwin Young, Director of Human Resources; Employee Organizations: Service Employees International Union (SEIU) Local 715 (part-time employees); and Sunnyvale Management Association and Conference with labor negotiators pursuant to Government Code 54987.6; Negotiator: Amy Chan, City Manager; Non-represented management employees and executives.

6 P.M. SPECIAL COUNCIL MEETING (Closed Session) - Closed session pursuant to Section 54956.8 – Conference with real property negotiator; Property: Sunnyvale Town Center
Negotiating Parties: Amy Chan, Agency Director; Peter Pau and Catherine Minor, Sunnyvale Mixed Use LLC; Under negotiation: amendment to terms of ARDDOPA.

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 Finance Mary Bradley
Finance Manager – Treasury Therese Balbo
Director of Human Resources Erwin Young
Housing Officer Laura Simpson
Neighborhood Preservation Manager Christy Gunvalsen
City Clerk Gail Borkowski

SPECIAL ORDER OF THE DAY

Sunnyvale Education Collaborative/Project H.E.L.P.

CLOSED SESSION REPORTS

Vice Mayor Hamilton reported City Council met in closed session earlier this evening regarding conference with labor negotiator pursuant to Government Code Section 54987.6; Negotiator: Erwin Young, Director of Human Resources; Employee Organizations: Service Employees International Union (SEIU) Local 715 (part-time employees); and Sunnyvale Management Association.

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

Vice Mayor Hamilton reported City Council met in closed session earlier this evening regarding: conference with labor negotiators pursuant to Government Code 54987.6. Negotiator: Amy Chan, City Manager: non-represented management employees and executives.

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

Vice Mayor Hamilton reported City Council met in closed session earlier this evening regarding closed session pursuant to Section 5495.68 – conference with real property negotiator; Property: Sunnyvale Town Center; Negotiating parties: Amy Chan, Agency Director; Peter Pau and Catherine Minor, Sunnyvale Mixed Use LLC; Under Negotiation: amendment to terms of ARDDOPA.

Vice Mayor Hamilton reported Council will reconvene this session after tonight's regular meeting.

PUBLIC ANNOUNCEMENTS

Councilmember Howe announced a boards and commissions continuous recruitment informational meeting is scheduled on October 30, 2008, at 6 p.m. in the City Hall West Conference Room.

Councilmember Howe requested the mayor and vice mayor work with the city manager on the agenda for November 25, 2008, and the parting gifts normally given to councilmembers and/or mayors, as appropriate, also be allowed to be given to the departing city manager at that time. Councilmember Howe requested the mayor and vice mayor proceed with this and the city attorney should assist in any way needed.

CONSENT CALENDAR

Councilmember Whittum pulled Items 1.F. and 1.G.

Councilmember Swegles pulled Items 1.A. and 1.B.

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

VOTE: 7-0

1.A. Approval of Revised Draft Minutes of September 30, 2008

Councilmember Swegles requested Items 1.A. and 1.B. be grouped together and stated he will abstain from voting on these minutes as he was not present at the Council meeting.

MOTION: Vice Mayor Hamilton moved, and Councilmember Howe seconded, approval of the Revised Draft Minutes of September 30, 2008, as placed on the dais.

VOTE: 6-0 (Councilmember Swegles abstained)

1.B Approval of Draft Minutes of October 7, 2008

MOTION: Vice Mayor Hamilton moved, and Councilmember Howe seconded, approval of the Draft Minutes of October 7, 2008.

VOTE: 6-0 (Councilmember Swegles abstained)

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

Fiscal Items

1.D. RTC 08–302 List of Claims and Bills Approved for Payment by the City Manager – List No. 422

Staff Recommendation: Council reviews the attached lists of bills.

1.E. RTC 08–300 Transmittal of Performance Audits of FY 2006/2007 for the Department of Employment Development Programs

Staff Recommendation: Council receives the audit report and concurs with management's acceptance of recommendations.

1.F. RTC 08–307 Amendment to Investment and Cash Management Policy

Councilmember Whittum questioned why this amendment to the Investment and Cash Management Policy to allow the purchase of municipal bonds came up now.

Director of Finance Mary Bradley explained that municipal bonds are always eligible for City investment. The City is always looking for safety and return. The municipals often pay as much or more than some of the taxable instruments. She and Finance Manager Therese Balbo would like to add municipal bonds into the City's authorized investments. They see some advantage or opportunity to invest in particularly the City's variable rate bonds, which would cause the City to be paying the same rate as it is making, as opposed to paying a high rate and making a low rate on a U.S. Treasury.

Vice Mayor Hamilton asked Director of Finance Mary Bradley to describe a scenario in which the City would buy its own bonds.

Director of Finance Mary Bradley described variable rate debt obligations for 505 West Olive Avenue – Sunnyvale Office Center. She noted the City could also diversify its portfolio with other high-rated municipals. They are short-term, less than 5 years, with no

market risk.

Public hearing opened at 7:32 p.m.

No speakers.

Public hearing closed at 7:32 p.m.

MOTION: Councilmember Howe moved, and Councilmember Lee seconded, to approve staff recommendation and requested the previous comments be included: Council adopts amendments to the attached Investment Policy Section III A. Authorized Investments; Councilmember Howe commended Finance staff on great innovation.

VOTE: 7-0

Personnel

1.G. RTC 08-310 Adoption of Sunnyvale Employees' Association (SEA) Memorandum of Understanding 2008-2012

Director of Human Resources Erwin Young was present.

Councilmember Whittum pointed out there is usually a fiscal impact presented for measures and asked what the cost would be for the increase in salaries and what the impact would be on the budget.

Director Young advised the impact on the budget over the four-year term would be dependent on the results of a salary survey conducted in the fourth year. The current salaries for all of these employees are approximately \$50 million. By the end of the term of this agreement, the salaries will increase to a total of \$55 million, or they could increase to as much as \$56 million, depending on the results of the survey.

Councilmember Whittum asked if there was an updated estimate of the shortfall, noting the last June budget estimate was a \$5 million shortfall between revenues and expenditures. Councilmember Whittum noted a car dealership has been lost and there have been other negative indicators.

City Manager Chan stated Finance staff will prepare the analysis and the information will be available in a few weeks.

Councilmember Whittum noted the MOU is currently revising the salary table and there seem to be discrepancies between actual compensation and what is in the table. Councilmember Whittum requested guidance in understanding the wage table.

Director Young explained the wage table and explained that various types of compensation employees could receive would equal their total compensation. Director Young pointed out the salary schedule is based wages.

Public hearing opened at 7:37 p.m.

There were no speakers.

Public hearing closed at 7:37 p.m.

MOTION: Vice Mayor Hamilton moved, and Councilmember Lee seconded, to approve staff recommendation: Adopt the Memorandum of Understanding with the Sunnyvale Employees' Association.

Councilmember Whittum requested this item be deferred, considering the City's financial condition is not quite as clear as Council thought it was a month ago. Councilmember Howe stated the agreement with the Sunnyvale Employees' Association expired earlier this year and Council had a great deal of discussion and the benefit of many salary surveys; and in his opinion, they are not overpaid either within the public sector or within the private sector.

Vice Mayor Hamilton agreed with Councilmember Howe and noted the previous MOU expired at the end of the fiscal year on June 30. Vice Mayor Hamilton stated it is not worth their good-faith negotiations with the employees' association to go back and renege on their agreement at this point.

Councilmember Whittum added information was not provided on the actual compensation for employees and noted every other city in the county had done that.

Mayor Spitaleri stated the association representing SEA and the City representatives negotiated in good faith and came together in a collective bargaining agreement that both parties could agree on. Mayor Spitaleri stated it's not legal to have the public involved in negotiations of terms and conditions of employment and added that there has been plenty of time and plenty of discussion over salary surveys; the information given to Council was complete and full.

VOTE: 6-1 (Councilmember Whittum dissented)

Contracts

1.H. RTC 08-308 Authorization to Modify an Existing Contract for Fire Protection Engineering Services for the Sunnyvale Town Center Project (F0809-19) and Approval of Budget Modification No. 14

Staff Recommendation:

- Council modifies an existing contract with ESH Consultants in substantially the same form as the attached agreement amendment, by increasing authorized expenditures from \$100,000 to \$210,000, and extend the contract period to January 31, 2010.
- Council delegates authority to the city manager to exercise an option to extend the contract for one additional one-year period, provided that pricing and service remain acceptable to the City
- Council approves Budget Modification No. 14 to fund the additional amount necessary for the project.

1.I. RTC 08–304 Award of Bid No. F0808-14 for Citywide School Pedestrian Safety Improvements

Staff Recommendation: Council awards a contract in substantially the same form as the attached draft and in the amount of \$214,850 to Republic ITS, Inc. for construction of the Citywide School Pedestrian Safety Improvements Project and Council approves a project contingency in the amount of \$32,228.

STAFF RESPONSE TO PRIOR PUBLIC COMMENTS

None.

PUBLIC COMMENTS

Samir George Damouny stated he has been hearing noise 24/7 coming from 1360 North Kifer Road, from a company called Level 3 Communication and since mid-July, he and his family cannot sleep at night because of the continuous noise coming from that company, which gets louder between 3 a.m. and 5:30 a.m each day.

Damouny stated he contacted the City of Sunnyvale which sent Senior Neighborhood Preservation Specialist Dale Huber to measure the noise decibels from Level 3 Communication and in front of his house. Damouny noted the maximum noise level for the City of Sunnyvale, in 19.42.030, shall not exceed 75 dBA at any point of the property line of the premises.

Councilmember Whittum asked if Damouny had worked with Neighborhood Preservation and contacted Council. Damouny confirmed he had contacted staff and Council.

Councilmember Whittum stated he would like to discuss this more offline and asked staff if they were in communication with Damouny and what the status was.

City Manager Amy Chan said staff would get back to Damouny via that week's weekly report with the status.

Councilmember Howe asked the city manager to also include information on Project Sentinel for Damouny as well.

PUBLIC HEARINGS/GENERAL BUSINESS

2. RTC 08–309 City of Sunnyvale Affordable Housing Strategy

Housing Officer Laura Simpson presented the staff report.

Vice Mayor Hamilton inquired about the number of housing units the City has for each income level. Housing Officer Simpson noted the existing units are not counted. The goal is for 2,500 new units in the housing element cycle which goes from 2007 to 2014.

Councilmember Swegles commented the ordinance that the City presently has is stringent, and also covers a majority of the problems in regards to doing any conversions. Councilmember Swegles noted with the two recent conversions, both the owners and the occupants received a substantial amount of funds to relocate.

Councilmember Swegles commented on the letter received from the Silicon Valley Realtors, and questioned, when considering what the study factors were in 2007 compared to what they are currently, if there were any revisions Council would be considering in light of what is going on in the market currently. Housing Officer Simpson stated that in terms of affordability of ownership and rental, the median home prices were taken from a June 2008 survey of the market. The survey indicated there is a shortage, even up through the income levels of 150 percent of area median income for affordable housing, given the median condominium and single-family home prices.

Housing Officer Simpson stated she had read through the Silicon Valley Realtor's letter, but had not analyzed it.

Councilmember Lee requested clarification from Housing Officer Simpson about lowering the threshold requirement to projects of five or more units, since currently the rental units are 15 percent BMR in Sunnyvale, but the ownership is 12½ percent and the current proposal is trying to propose an increase to 15 percent. Housing Officer Simpson noted there is an in lieu fee allowable for projects of fewer than nine units, so there would be an in lieu fee that would be a fractional unit fee.

Councilmember Whittum asked questions about below 30 percent of area median housing and noted there are only 24 units in all of Sunnyvale. Housing Officer Simpson discussed the housing strategy, containing a considerable amount of research and data that was completed over the past year, that would be used by the housing element consultant and informing some of the work that goes into the preparation of the housing sub-element.

Councilmember Whittum asked if staff was looking for Council to provide some sense of the Council's priorities and what staff was really looking for from Council. Housing Officer Simpson noted staff is looking for feedback on any strategies proposed.

Councilmember Whittum noted, referring to a document from ABAG (Association of Bay Area Governments) that indicated the regional housing needs allocation, said Sunnyvale needs 1,073 very-low-income units, which is 50 percent of AMI and down. Councilmember Whittum pointed out not all of the numbers can be achieved, based on the City's resources, so decisions needed to be made.

Councilmember Whittum noted the summary of housing funds showed how the housing mitigation fund went from \$12 million to \$6 million to \$2 million, and stated he wanted to get a sense of where the City was and why there were big changes. Councilmember Whittum stated he hoped those millions somehow would be going to help the City with the very low number. Housing Officer Simpson noted the attachment page summarized the housing fund set and was a projection created at an earlier date. The amounts shown in the RTC and the staff report were the actual fund balances as of June 30, 2008. Attachment A is a projection and it assumes there were funds going into certain developments.

Housing Officer Simpson stated there were funds in the amount of \$8.2 million that were set aside for housing that would be homeless or very-low income to extremely-low income and the funds set aside for the Fair Oaks Project of \$6 million would be reserved for very-low income-housing.

Councilmember Whittum noted the \$8 million for Onizuka and verified answers to questions

received from the Silicon Valley Association of Realtors. Director Hom responded to Councilmember Whittum's questions about the 15 percent requirement needing to be applied Citywide.

Housing Officer Laura Simpson clarified that LTV stands for Loan-to-Value ratio.

Councilmember Moylan asked why the City is doing this and explained his understanding of the rationale. Housing Officer Simpson explained the programs are designed to benefit residents and people who work in Sunnyvale.

Councilmember Moylan inquired if it is possible to place an employment requirement on people who get into the BMR program – rental or ownership – or the down payment program, to require employment or residency in Sunnyvale and asked if this is within the Council's purview. Housing Officer Simpson stated the City does have preference points already established.

Councilmember Moylan addressed hard eligibility requirements – either current residency or current proof of employment within the City. Director Hom stated it depends on the funding source. City Manager Chan suggested Council include a request that staff look into whether it is legally feasible as a part of the motion. City Manager Chan stated the city attorney would need time to look at all aspects, including federal restrictions.

Councilmember Moylan shared the assertion from a San Jose State professor he heard speak that the way to solve the problem is to increase the inventory and not to have BMR programs. The professor basically said BMR programs do not work. He noted that one of the things recommended was to have a different percentage of BMR units for a new project. The argument is that whoever is creating the project is doing it as a business person and is expecting a certain return; that return is either going to be divided equally among all of the units or if there is one unit that is held low – below market – then that return has to be spread over the remaining units. Councilmember Moylan questioned whether or not doing this would basically increase the price of all of the other houses in the complex that are not BMR units. Housing Officer Simpson responded that staff has heard that argument made before. The economic analyses she has reviewed indicate the value comes out in the land.

Councilmember Lee stated his understanding of the asked for clarification about the BMR application process and point system in regards to current Sunnyvale residents and people working in Sunnyvale. Housing Officer Simpson stated Councilmember Lee's understanding was correct.

Housing Officer Simpson confirmed the document has been reviewed by the Housing and Human Services Commission and clarifications are in the minutes.

Councilmember Swegles asked if charging in lieu fees instead of the BMR program has been explored. Housing Officer Simpson referred Councilmember Swegles to page 8 of 12 in the RTC and noted, in terms of increasing flexibility with the BMR ordinance, the option of acquisition and rehab of offsite housing to create affordable units could be considered.

Director Hom reminded Council that there was a study issue to explore the flexibility of offsite BMR types of projects, which he noted a lot of cities do implement. Director Hom added the current ordinance does not allow that option. It did not rank high enough for consideration, but it was included as a possible strategy element in case Council wished

staff to further explore that possibility.

Director Hom stated his understanding of the policy is the City was very strong about requiring affordable units to be integrated within the market rate projects rather than concentrating those units in a particular project, so there was no option offered for more than 19 units to have an in lieu fee option.

Public hearing opened at 8:18 p.m.

Mary Combes stated she has been a resident of Sunnyvale and has been an active Realtor for more than 15 years in Sunnyvale, Cupertino and the surrounding areas. She has been involved with the BMR program and it is highly successful and very beneficial. She also noted the program is easy to accommodate homeowners and to follow and asked Council to continue the service.

Councilmember Lee asked Combes what her comment was regarding the proposed changes by City staff regarding increasing the number of BMR units. Combes stated she thought there should be an increase.

Councilmember Swegles asked if Combes had heard of or dealt with programs where cities go in and revitalize homes. Combes stated if that could occur; it would be a brilliant idea.

Roland Schulz stated he is a representative of Realtors who represent BMR buyers and everyone who has been able to be a part of the program has been very appreciative. He supports the program.

Dr. Beverley Bryant, representing the Home Builders Association (HBA) of Northern California and representing the homebuilders in the valley, spoke regarding the BMR program and asked Council to look over materials she had provided. Bryant noted the homebuilding industry is in terrible shape, and she gave an overview of the state of the homebuilding industry. She noted that increasing the BMR percentage from 12.5 percent to 15 percent would make a difference. She also questioned the comment "it's in the land," because land is a finite quantity in this valley and landowners are holding onto their land.

Bryant then presented her concerns about process and about projects and commented there was not a chance to participate in the study session that Council had. Secondly, Bryant noted the HBA had not been notified about the developments that had gone on and stated Sunnyvale does a good job with BMR and developing housing. However, the association is looking at serious concerns about raising the 12.5 percent to 15 percent. The association is also concerned about dropping the quantity from 10 to five in the projects because that does make a lot of small projects not happen because of the inclusionary requirement kicking in.

Bryant requested Council leave the policy as it is, going forth, developing a housing element, and letting the industry recover, stating she hears estimates of 2014. She said it might be 2012, but it is not immediate and it is in bad shape.

Councilmember Howe asked Bryant what geographic area the HBA covers. Bryant responded it covers 14 counties in Northern California. The five counties she covered when she represented the association were the Southern Division: San Mateo, Santa Clara, Santa Cruz County, San Benito County and Monterey County.

Councilmember Howe asked during Bryant's time with HBA if the association worked with any municipalities on a BMR ordinance or on a housing ordinance. Bryant responded that the association has worked with a lot of housing ordinances. She also noted the association did a lot to develop the policies in the green booklet she gave Council, and the association has worked with many cities in the valley on this particular issue.

Councilmember Howe asked Bryant if the person who took her place would be willing to work with the City on an ordinance. Bryant said that person would be willing and a builder in the association said he would also be willing to participate. Bryant stated talking with builders is important.

Arthur Schwartz, a volunteer with Habitat for Humanity asked that Habitat for Humanity's Silicon Valley Chapter would be included in the deliberations among staff and that the organization could be approached if any land becomes available. They could participate with the City. Schwartz noted he is on three committees – Design, Construction, and the Green Committee – for the chapter, so he can be contacted directly if Council is interested in input from the Silicon Valley Chapter.

Councilmember Swegles asked Schwartz if Habitat for Humanity ever deals with any multi-family projects. Schwartz stated the Silicon Valley Chapter has built two multi-family housing projects. He personally worked on a project for the Peninsula Chapter – 28 condominium units in five buildings in East Palo Alto. He noted that currently the organization is building five homes consisting of three buildings. There are two multi-family units within the five units being built, and the homes are located in Santa Clara.

Paul Stewart represents the Sunnyvale Chamber of Commerce and also serves as the Co-chair of the Note Bar Trouble Silicon Valley Educational Program which was initially started through the City of San Jose's Housing Department. He offered his services to staff to be included in the homebuyer education component of their entire BMR program.

Stewart, speaking as the CEO of the Sunnyvale Chamber of Commerce, advised that the Chamber would like to work with staff to include other industrial and commercial developments in the mitigation fee. The Chamber also would like to work with staff on considering revising downward the \$8 per sq. ft. fee to help stimulate economic development. Stewart stated he would make himself available to Director Hom whenever Director Hom might need him. The Chamber also recommended Council keep the BMR rate at 12.5 percent for ownership. The Chamber also recommended the Council keep the threshold requirement for inclusionary units at its current pace of 10. The Chamber would also like to recommend keeping the 30-year inclusion on the sale at 30 years, and not increasing it.

Kelly Snider, representing Sand Hill Property Company, noted they are a developer and property owner in downtown Sunnyvale. She stated she was a little unclear about the RDA project area and the 15 percent recommendation, because there was a pending developer agreement for the Town Center project which is a redevelopment area. Her understanding was the developer agreement would take precedence in all cases, and that was 12.5 percent. She stated she was not sure if the adjustment was made, whether doing so would be moot, or if it was intended to be retroactive. If that is the case, Sand Hill Property Company would strongly object to. Regarding other recommendations in the housing strategy, she felt raising the requirement from 12.5 percent to 15.0 percent would have a

huge impact on *pro formas*.

Councilmember Lee pointed out his understanding that since the ARDDOPA agreements have already been signed, those would be the terms and afterwards would be *ex post facto*, so it would not have any effect on the current project. City Attorney David Kahn stated that Councilmember Lee was correct. City Attorney Kahn stated the terms of the ARDDOPA would cover any agreement regarding the BMR housing, even if there were subject change, unless there was a negotiated amendment to the agreement.

Public hearing closed at 8:36 p.m.

Councilmember Swegles asked if staff would be willing to work with various speakers who offered their assistance in giving input, which might change some of the demographics of the current proposal, and if they could include that information in a final draft.

Director Hom affirmed that if Council moved forward and provided direction to staff to take a look at some of the amendments, such as to the BMR program, staff would want to work with the HBA. He felt it was central to work with the development community, the nonprofit community, other interests and the NPA, in finding a wide range of comments and the best solutions, so that would definitely be part of the process.

Vice Mayor Hamilton wanted to be clear about what the staff recommendation is. She wanted to confirm that the list of short-term and long-term objections on pages 7-9 of the staff report was a pretty accurate summary of the changes to the staff report. Housing Officer Laura Simpson confirmed it summarized the proposals.

Vice Mayor Hamilton also asked if the staff recommendation was to approve the housing strategy because she wanted to be clear about what she was actually going to approve when the motion came around. Vice Mayor Hamilton commended staff for including the Council study session as a section of the staff report.

Councilmember Whittum stated it appeared that the strategy, if adopted as is, would mean increasing BMR ownership from 12.5 percent to 15 percent. Councilmember Whittum requested confirmation that this was an adoption of a BMR ordinance or an opportunity to consider it. Housing Officer Laura Simpson confirmed it would be brought back to be considered since all of the changes would need to come back for a public hearing.

Director Hom noted that if there is an ambiguity about the strategy committing the Council to a certain direction, language could be used to say “explore” or provide . . . if it is something Council would be interested in pursuing.

MOTION: Councilmember Howe moved, and Councilmember Swegles seconded, to return this item to staff; directed staff to integrate both the Sunnyvale Affordable Housing Strategy with the Sunnyvale Housing Sub-element and combine both, then come back to Council within three months with an outreach work plan on how this will be done, including an outreach into business, public, housing entities and the Housing and Human Services Commission; Council additionally directed on page 7, under Short-term Objectives 2. Down Payment Assistance: to the extent legally possible, require Sunnyvale employment or preexisting Sunnyvale residents be eligible and Short-term Objectives 2.c. would not be restricted to those particular occupations, but would be open to anyone who works in town if they meet the low-income requirements;

- under Short-term Objective 3. Need to increase affordable production overall: revise BMR ordinance, to the extent it is legally possible, require Sunnyvale employment or preexisting Sunnyvale residence;
- rephrase 3.c. to read, increase BMR ownership from 12.5 percent to 15 percent only where legally required in future RDA areas;
- delete 3.d. Lower the threshold requirement to projects of five or more units;
- delete 3.e. Amend terms to 45 years for BMR ownership – consistent with state redevelopment law to ensure RDA-funded units are counted;
- delete 6.c. Raise BMR percentage requirements to more aggressive levels, e.g., 20 percent or more;

Council further directed staff to include that Council prefers that significant preference be given to those employed in the City of Sunnyvale and current residents of Sunnyvale and, in the report and through the public process, staff will offer a recommendation.

VOTE: 6-1 (Councilmember Whittum dissented)

MOTION: Councilmember Howe moved, and Councilmember Moylan seconded, to direct staff, in conjunction with action previously directed, to review the mobile home closure ordinance and how it compares to surrounding cities, and to bring an information item back to Council before adoption of the housing element.

MOTION FAILED.

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

3. RTC 08–301 Consider a More Aggressive Approach to Code Enforcement [Study Issue]

Neighborhood Preservation Manager Christy Gunvalsen presented the staff report.

Councilmember Howe asked how many citations are solved at either no citation or at \$50 presently. Neighborhood Preservation Manager Gunvalsen responded that more than 90 percent of cases they have are resolved without issuing any citations. Councilmember Howe asked how many citations are written without a financial as a percentage of the 10 percent and how many go to the \$50 stage. Neighborhood Preservation Manager Gunvalsen stated most of the violations are corrected after the first warning. Ninety percent are corrected after the warning process has been exhausted (i.e., after two warnings). Neighborhood Preservation Manager Gunvalsen guessed 75 percent are corrected after the first warning.

Councilmember Howe asked how many warnings go from a citation in the amount of \$50 to \$100, where there is a second monetary citation. Neighborhood Preservation Manager Gunvalsen estimated 25 percent of the 10 percent are issued a citation starting at \$100. Seventy-five percent are issued one citation and then comply; 25 percent are issued subsequent citations.

Neighborhood Preservation Manager Gunvalsen confirmed for Council that two sentences related to the two recommendations of auto and vehicle service repair on Attachment C were struck and would not be replaced in the ordinance. Neighborhood Preservation

Manager Gunvalsen also confirmed that foreclosed property abatement liens by the City would be removed from the property during the transfer process to the bank.

Vice Mayor Hamilton requested clarification on recoverable fees by the City. Neighborhood Preservation Manager Gunvalsen responded that some cities have conducted monitoring of properties and have tried to put liens on the properties, but they have had to go through the court process. They may be forgiven by a judge, or the City may choose to absorb those costs. Vice Mayor Hamilton asked for clarification about whether the staff recommendation was just to leave this alone. Neighborhood Preservation Manager Gunvalsen affirmed that was correct.

Neighborhood Preservation Manager Gunvalsen explained the different ways in which staff handles graffiti issues including the standard practice. She explained when determining how to handle graffiti issues, the history of the property is taken into account and whether or not the property owner has been working with staff. Councilmember Swegles then asked if in the graffiti area, if it is not addressed in a quick manner, could it be a repeated situation or the amount of graffiti could be expanded. Neighborhood Preservation Manager Gunvalsen noted that the procedure could be changed to give the property owner one week's notice and then issue a citation if, at the end of the week, the graffiti had not been removed.

City Manager Amy Chan advised shortening the one-week notice would need Council direction and could be made part of the motion.

Mayor Spitaleri raised a concern citing senior citizens and asked if any contact is made once a senior citizen has been cited. Neighborhood Preservation Manager Gunvalsen responded that the City issues a courtesy notice, which explains what the violation is and a deadline. The notice always includes the Neighborhood Preservation Specialist's name and contact information. The City also conducts "knock and talks" at people's property if they notice a violation and see a car in the property owner's driveway. They do not proactively try to call people if there are no issues, but if there are issues, staff will try to talk with the people one on one.

Mayor Spitaleri stated his concern that as the Sunnyvale population is growing older and getting more and more homebound, and having less capability to respond to a citation, so unless a person knocks on the door and tries to make contact with the property owner, the City may not be aware that the person may not be able to respond to the citation. Mayor Spitaleri asked how a senior citizen could be put in contact with the organizations that were mentioned in the staff report. Neighborhood Preservation Manager Gunvalsen responded that if the property owner calls the City and explains the particular hardship case, then staff will put the property owner in contact with the agencies as resources to assist them.

Mayor Spitaleri noted that he was thinking more of seniors with partial dementia or who have caregivers who may not speak English and how the program could be more proactive in intervention early on if the City knows the property owner is a senior.

City Manager Chan stated the challenge for staff is to know which residents are seniors or that they have a hardship. City Manager Chan advised workload on City Staff would significantly increase if the staff was charged with knowing which seniors needed help and which could easily respond to a warning notice.

Mayor Spitaleri suggested that at the time of issuing a second citation, the possibility of a

proactive effort to get in touch with the property owner would be a good idea. Neighborhood Preservation Manager Gunvalsen advised staff covers more than 3,000 cases a year, and it would be very difficult for staff to attempt to make one-on-one contact with individuals to find out their particular situation and commented that it is very rare that somebody contacts staff to say he or she is unable to correct the code violation. If that does occur, the property owner has the option of appealing the citation through the administrative hearing process. The hearing officer can reduce the citation amount or rescind the citation entirely.

Mayor Spitaleri asked if there could be an aggressive program where on the second notice, someone would knock on the door and find out who was in the home. If staff saw the occupant was a senior, perhaps that could start the dialogue. City Manager Chan stated the question is resources. She stated that the Council may want to include that approach in a motion and direct staff to return to Council with a recommended increase in staffing.

Mayor Spitaleri noted he was looking for the same kind of program as PG&E has where the company can be notified if a senior is living in a particular household.

Councilmember Lee asked staff how long the Neighborhood Preservation Program has been in existence. Neighborhood Preservation Manager Gunvalsen believed the program had been in existence since the mid to late 1970s. City Manager Amy Chan estimated approximately 20 years.

Councilmember Swegles noted there is an organization called Rebuilding Together and asked when a second warning is issued, can staff include a Rebuilding Together brochure with it. Neighborhood Preservation Manager Gunvalsen explained that staff does send that information and gives property owners other types of resource information when the person contacts staff and explains the particular situation.

Councilmember Swegles then asked if the information could go to all residents – not commercial. City Manager Chan noted that as people call staff, they talk to them and find out what the issues are and then try to connect them with the resource that would help them the most.

Director Hom stated property owners could be referred to some of the City's local programs. There is a list of resources – depending on the violation – that the City can customize referrals to, as necessary. Director Hom stated that staff can let property owners know of other organizations that are not sponsored by the City. Councilmember Swegles requested a copy of that list and pointed out that an article in the quarterly could be included that would make more people aware of the resources available. Director Hom added the current fact sheet could be updated to list the different resources available, which would include Rebuilding Together and the type of assistance they offer.

Public hearing opened at 9:45 p.m.

Jim Griffith, Sunnyvale resident and was an HOA president for 11 years, expressed concern with Alternative 2, reducing the administration citation appeal period from 30 days to 15 days. Griffith pointed out that many people travel or might need more time to go through the process. Griffith stated 30 days was enough, but 15 may be too short and he would like to have people have the opportunity to work through the legal process.

Councilmember Howe asked staff if, during the appeal process, enforcement and issuing

citations continue. Staff confirmed that it does. Neighborhood Preservation Manager Gunvalsen clarified that changing the appeal period would expedite the process. Councilmember Howe inquired if there is a notice on each citation stating that additional citations will be issued. Neighborhood Preservation Manager Gunvalsen read the wording verbatim. Councilmember Howe then asked if a date could be included on the citation stating when the property owner would receive another citation. Neighborhood Preservation Manager Gunvalsen stated staff generally handwrites "Citations will be issued on or after 'x' date if the violation is continued."

Vice Mayor Hamilton asked Griffith if he thought the whole process should be completed within 30 days. Griffith stated he did not think so and that the window of appeal was the only thing he was concerned about. Griffith pointed out that staff was talking about things mailed, not hand delivered, so that also would add to the complexity.

Vice Mayor Hamilton asked staff if a property owner needs to make a phone call within 15 days if an appeal is to be made. Neighborhood Preservation Manager Gunvalsen stated the property owner needs to mail the notice Request for Hearing back to the City. It must be postmarked within 30 days currently.

Councilmember Moylan noted Jim Griffith's concern applied to a small number of people, yet 10 percent would be 300 people – almost one each day.

Public hearing closed at 9:53 p.m.

Mayor Spitaleri asked staff if, based on the problem area, there is flexibility on how many days are given to the property owner to correct the situation. Neighborhood Preservation Manager Gunvalsen responded there is flexibility.

MOTION: Councilmember Howe moved and Mayor Spitaleri seconded to approve staff's recommendation with the following exceptions: Alternative #1 – Council directs staff to work with the Office of the City Attorney to amend the Administrative Citation Fee Schedule except the fee for first violation shall remain at \$50, reduce the administration citation appeal period from 30 days to 15 days, and amend the automobile/vehicle service ordinance; Council directs staff to write a study issue paper to explore different alternatives for the City to assist with graffiti abatement on private property; additionally directs abatement of repetitious graffiti have a timeframe of three days instead of seven days.

Councilmember Howe offered to cosponsor a study issue with Mayor Spitaleri on how elderly notification for emergency situations could be integrated, concerning all City services.

Vice Mayor Hamilton stated she will be opposing this motion. Vice Mayor Hamilton state she liked the higher fees and would like to see the City put more resources into Neighborhood Preservation to try to rectify the situation. She stated a revenue source is needed to do so and encouraged her colleagues to agree with her.

Councilmember Whittum stated he would be holding out for the higher fines and he liked the shorter time limit on the graffiti. He also liked the three days; however, he preferred to keep the staff recommendation on the fines as stated by the Vice Mayor, due to lack of funds for Neighborhood Preservation. Councilmember Whittum stated their services were needed, and if higher fines helped to resolve their needs, the more the better.

MOTION FAILED.

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

MOTION: Vice Mayor Hamilton moved and Councilmember Lee seconded to approve Councilmember Howe's previous motion with the one exception that Council approve staff recommendation on Alternative #1, including the other changes and including the shortened timeframe on the graffiti; Council directs staff to work with the Office of the City Attorney to amend the Administrative Citation Fee Schedule, reduce the administration citation appeal period from 30 days to 15 days, and amend the automobile/vehicle service ordinance; Council directs staff to write a study issue paper to explore different alternatives for the City to assist with graffiti abatement on private property; and Council directs abatement of repetitious graffiti have a timeframe of three days instead of seven days.

Councilmember Lee offered a friendly amendment and asked that the amount of the violations be printed in the warning on the new forms given to property owners, to advise of the cost if there is non-compliance.

Vice Mayor Hamilton accepted the friendly amendment.

RESTATED MOTION: Vice Mayor Hamilton moved and Councilmember Lee seconded to approve Councilmember Howe's previous motion with the one exception that Council approve staff recommendation on Alternative #1, including the other changes and including the shortened timeframe on the graffiti; Council directs staff to work with the Office of the City Attorney to amend the Administrative Citation Fee Schedule, reduce the administration citation appeal period from 30 days to 15 days, and amend the automobile/vehicle service ordinance; Council directs staff to write a study issue paper to explore different alternatives for the City to assist with graffiti abatement on private property; and Council directs abatement of repetitious graffiti have a timeframe of three days instead of seven days; and print the list of the violation costs in the warning notice.

VOTE: 7-0

Councilmember Howe asked that rather than ending the City Council meeting by 11 p.m. and then going into a closed session after that, if Council could possibly conclude the entire night by 11 p.m. He asked if there was any objection. Vice Mayor Hamilton stated she did not think the next two items would take much time. Vice Mayor Hamilton stated she did not want to put a time limit on the meeting and requested Council proceed with the agenda.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded to adjourn the closed session at 11 p.m. at the latest.

Councilmember Howe stated much time had been spent on minor items and Council will have a long day the next day. Councilmember Howe commented he felt the Council should be better stewards of its time.

Councilmember Whittum asked if the closed session could be moved to the next morning. Councilmember Howe stated that it could be changed in the motion and stated he was willing to make that change.

Mayor Spitaleri asked if Council could adjourn to the next morning to finish the closed session. City Attorney David Kahn said that would be acceptable if it is within 24 hours, but he said he would check that before the end of the closed session.

Councilmember Moylan supported Councilmember Howe's statement encouraging Council to do their homework and e-mail staff their questions ahead of time. Councilmember Moylan noted his conflicts for the next day's session due to scheduled meetings. Councilmember Moylan requested there not be a set time the closed session ended, because he would already be on City business the next morning.

Mayor Spitaleri noted the Council does have the ability to go into closed session after the meeting. Mayor Spitaleri stated if they were not done with their business, the Council can then set another date for a closed session to resolve the rest of the issues if there were any. City Attorney Kahn noted there was some time-sensitivity to the issue that he could discuss further in closed session, so it would be advantageous if everything could be concluded this evening or the next morning.

RESTATED MOTION: Councilmember Howe moved and Councilmember Swegles seconded to conclude the continued Closed Session by 11 p.m.

MOTION FAILED.

VOTE: 3-4 (Vice Mayor Hamilton and Councilmembers Moylan, Lee, and Whittum dissented)

4. RTC 08-294 Consider Transitioning the Child Care Advisory Board to a Staff-Advisory Committee (Study Issue)

Youth and Family Resources Manager Angela Chan presented the staff report.

Public hearing opened at 10:10 p.m.

Mayor Spitaleri noted the one speaker card left belonged to a person who had already left the Council meeting.

Public hearing closed at 10:10 p.m.

MOTION: Councilmember Lee moved and Vice Mayor Hamilton seconded to approve Alternative #2 Council supports Staff's recommendation to transition the Child Care Advisory Board to a Staff Advisory Committee.

Councilmember Lee stated he thought it was right to transition this to a Staff Advisory Committee, given the nature of the changes. Vice Mayor Hamilton agreed.

VOTE: 7-0

5. RTC 08-303 Request for Proposals (RFP) Review by Council Prior to Issuance (Study Issue)

Director of Finance Mary Bradley presented the staff report.

Public hearing opened and closed at 10:13 p.m.

Councilmember Moylan stated he wanted to move Alternative #2 and he would speak to it if it was seconded.

MOTION: Vice Mayor Hamilton moved and Councilmember Swegles seconded to approve Alternative #1 which would continue the current practice of preparing, issuing, and evaluating RFPs without advance review by Council, but would provide additional standard information in Staff reports including RFP evaluation criteria/weighting, a list of proposers, and an explanation of why a proposal is being selected for recommended approval.

Councilmember Moylan stated this was inspired by the contract for the SMaRT station, whereby the Council, in the stage where the RFP was being developed, chose what the criteria would be between the bidders. When it came back, Council learned that Staff chose what the weighting for those criteria would be, which completely determined the outcome of the bid to the point where a couple of the Councilmembers were uncomfortable. He felt Alternative #2 would be better.

Vice Mayor Hamilton stated the reason she was supporting the current process was that there are a lot of RFPs that go out, and she feels Council does not have to be involved in all of them. Vice Mayor Hamilton stated she did not want to see RFPs coming to the Council on a routine basis and it was better dealt with on a case-by-case basis rather than spending the time and effort to create a policy framework to accomplish that goal.

Councilmember Whittum stated he felt that with Alternative #2, Council would be seeing the RFPs where the City Manager made a determination, which then would leave it to their discretion, or when it was requested by Council. He state he opposes the motion.

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

NON-AGENDA ITEMS & COMMENTS

COUNCIL: Councilmember Howe asked Councilmember Swegles if Councilmember Swegles would be willing to take his place on the Council dinner committee for November 25. Councilmember Swegles said he would be happy to take Councilmember Howe's place on the committee. Councilmember Howe asked that the Mayor swap the two appointments.

Councilmember Moylan asked for an update on the study session on public financing that was supposed to appear on the calendar within the next three months. Councilmember Moylan also requested the issue coming through from the BPAC on connecting to regional bike trails be put on the agenda as soon as possible, noting it was pulled off of the Sunnyvale agenda at the request of Los Altos. Councilmember Moylan announced anyone who wanted to could get a discounted signup fee for the turkey trot over the next two days. There is a new event this year – the Mayor's Cup – in which all city councils will go against each other.

STAFF: None.

INFORMATION ONLY REPORTS/ITEMS

- Tentative Council Meeting Agenda Calendar
- Draft Minutes of the Housing and Human Services Commission of September 24, 2008

ADJOURNMENT

Mayor Spitaleri adjourned the Council meeting to the Onizuka Local Redevelopment Authority at 10:21 p.m.

Gail Borkowski
City Clerk

Date: