

APPROVED MINUTES*
SUNNYVALE CITY COUNCIL
ONIZUKA LOCAL REDEVELOPMENT AUTHORITY MEETING
TUESDAY, DECEMBER 2, 2008

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

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| 7 P.M. COUNCIL MEETING |
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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 Gary Luebbers
Assistant City Manager Robert Walker
City Attorney David Kahn
Director of Community Development Hanson Hom
Assistant to the City Manager Coryn Campbell
City Clerk Gail Borkowski

PUBLIC ANNOUNCEMENTS

Barbara Fukumoto stated she had three announcements: due to tragic events in Mumbai, India, the Live Earth Concert and rebroadcast at the Sunnyvale Hindu Temple had been cancelled; Acterra is presenting free training in January on basic home energy audits and how to install simple energy efficiency upgrades; the annual meeting of Sustainable Silicon Valley will be held at the Sun Microsystems auditorium to discuss the Bay Area in 2030 and the long term outlook for water, transportation, electricity, risk management, and planning.

Sean O'Keefe, owner of Scruffy Murphy's Irish Pub & Restaurant on Murphy Ave., invited Council to a complimentary buffet to celebrate their winning the KRON Best Pub and Restaurant in Santa Clara County. He also announced the Christmas Tree Lighting Ceremony and Mayor Spitaleri will be lighting the tree.

Councilmember Swegles announced Sunnyvale Community Services will be holding their Annual Christmas Auction. Everyone is invited to bring a can of food or toy, which is required for admission.

CONSENT CALENDAR

Councilmember Whittum pulled Item 1.D.

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

VOTE: 7-0

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

Fiscal Items

1.B. RTC 08–350 List of Claims and Bills Approved for Payment by the City Manager – List No. 429

Staff Recommendation: Council reviews the attached lists of bills.

1.C. RTC 08–352 Carryover of Unexpended City Funds from FY 2007/08 to FY 2008/09 for State of the City Event and Restoration of Funding for the FY 2008/09 State of the City Event and Approval of Budget Modification No. 17 continued from November 18, 2008

Staff Recommendation: Council approves carryover of \$50,620 in allocated but unexpended State of the City funds from FY 2007/08 to FY 2008/09; and Council restores \$28,000 in funding for the FY 2008/09 State of the City Event.

Contracts

1.D. RTC 08–353 Authorization to Modify an Existing Contract for Design and Construction Support Services for the Mathilda Avenue Overhead Bridge Rehabilitation Project (F0811-30)

Councilmember Whittum advised he lives within 500 feet of the project and recused himself.

Public hearing opened at 7:10 p.m.

No speakers

Public hearing closed at 7:10 p.m.

MOTION: Vice Mayor Hamilton moved, and Councilmember Howe seconded, to approve staff recommendation: Council approves the Third Amendment to Consultant Services Agreement between the City of Sunnyvale and Mark Thomas & Company, Inc. in the amount of \$263,292 for additional services related to design and construction support services for the Mathilda Avenue Overhead Bridge Rehabilitation Project; and Council authorizes design contingency in the amount of \$60,000.

VOTE: 6-0 (Councilmember Whittum recused)

1.E. RTC 08-351 Award of Contract for Network Storage Device System and Award a Contract for Blade Servers (F0810-22)

Staff Recommendation:

- Council awards a contract in substantially the same form as the attached draft in the amount of \$291,107 to Network Appliance, Inc. to furnish and install a Network Appliance for storage expansion and disk space backup;
- Council awards a contract to INX Inc., in substantially the same form as the attached draft in the amount of \$165,937, to furnish and install blade servers; and
- Council approves a server implementation contingency in the amount of \$24,891.

STAFF RESPONSES TO PRIOR PUBLIC COMMENTS

None

PUBLIC COMMENTS

Patrick Meyering recommended four study issues: consider a community shuttle service from Moffett Park to the Downtown Park and Ride Lot in south Sunnyvale; consider the Mayor being elected by Sunnyvale residents; discontinue lifetime health insurance for Council; and consider an ordinance to protect City volunteers from retaliation from any City official.

Councilmember Whittum stated he would sponsor the four study issues.

Vice Mayor Hamilton stated Council had previously dealt with some of the issues, and Council no longer receives lifetime health insurance. She said that two years ago the Charter Review Committee recommended against the direct election of the Mayor, and she believed it was the second time in the past ten years that a decision was made not to pursue the direct election of the Mayor. Referencing Meyering's fourth concern about City retaliation towards a City Volunteer, she stated the report did substantiate some of the issues and Council previously took action to rectify the matter.

Mayor Spitaleri stated he would co-sponsor the shuttle bus study issue.

Tap Merrick requested that the City of Sunnyvale be frugal in regards to spending. He sought a study issue to look at the cost of benefits for City employees including management employees. He was disappointed to learn some unions had gone without cost of living adjustments for four years.

Robert Schwiesow expressed his gratitude to the Below Market Rate (BMR) Home Ownership Program, for helping him purchase his Sunnyvale home. Without it he would not have been able to continue living in Sunnyvale.

PUBLIC HEARINGS/GENERAL BUSINESS

- 2. ORDINANCE NO. 2885-08 Adoption of Ordinance 2885-08 Adding Section 19.26.220 (Mixed use Combining District) and Section 19.26.230 (Live/Work Units) to Chapter 26 (Combining Districts) of Title 19 (Zoning) of the Sunnyvale Municipal Code Pertaining to Mixed Use Combining Districts**

3. ORDINANCE NO. 2886-08 Adoption of Ordinance No. 2886-08 Amending the Zoning Plan, Zoning Districts Map, to Rezone Certain Property Located at 1275 and 1287 Lawrence Station Road from M-S (Industrial and Service) to R-5/MU (High Density Residential and Office/Mixed Use Combining District) Zoning District

Councilmember Swegles suggested Items No.2 and No.3 be addressed at the same time since it was the second reading of both ordinances.

Councilmember Whittum proposed an amendment to Ordinance No. 2885-08, to strike the 1/2 mile requirement and replace with a 1/3 mile requirement. The ordinance currently states that a Mixed Use Development should only be considered if located adjacent (within 1/2 mile) to a major expressway or public transit stop (VTA Light Rail or Cal Train). Councilmember Whittum explained that VTA guidelines allow you to use a 9 percent trip reduction in your calculations if you are within 2000 feet, which equals 0.38 miles. He believes using the 1/3 of a mile as opposed to the 1/2 mile will make for a tighter location to transit.

Councilmember Whittum also spoke against Ordinance No. 2886-08. He was concerned that there are 348 residential units across the street from Federal Express in an Industrial Area. He did not believe that this land use decision was appropriate. He believed eventually there will be more residential and less industrial. The short-term question is whether FedEx can satisfy the 50 decibels (dBA) at the lot line requirement. Currently, the FedEx zoning requirement is 70 dBA at the lot line. Councilmember Whittum said it would be prudent to defer this item until it is determined if FedEx can meet the 50 dBA requirement; otherwise, they could be in violation of the ordinance.

Public hearing opened at 7:20 p.m.

No speakers.

Public hearing closed at 7:20 p.m.

MOTION: Councilmember Howe moved, and Councilmember Swegles seconded, to approve staff recommendation: Council approved the second reading of Ordinance No. 2885-08 and Ordinance No. 2886-08.

City Clerk Borkowski read the title of each ordinance.

VOTE: 5-1 (Councilmember Whittum dissented; Vice Mayor Hamilton abstained since she was not present for the first reading)

4. MOTION RTC 08-344 Consideration of Number of Councilmembers Needed to Support Creation of A Study Issue Paper- (continued from August 26, 2008)

Assistant to the City Manager, Coryn Campbell, presented the staff report.

Councilmember Swegles reviewed the quantity of study issues from 2008. There were 120 proposed study issues with 41 of them being ranked. Of those 41 study issues, Council studied 23. Councilmember Swegles then confirmed with staff that of those 120 originally proposed study issues only 23 study issues were addressed.

Assistant to the City Manager Campbell confirmed that Councilmember Swegles' data points were correct.

Public hearing opened at 7:30 p.m.

Mei-Ling Stefan thanked Council for their vote on, July 22, 2008, rescinding the number of Councilmembers needed to sponsor a study issue. She stated the City is better served if only one Councilmember is needed to initiate a study issue, even though it takes the support of several Councilmembers for a study issue to go forward.

Tap Merrick suggested that two Councilmembers be required to sponsor a study issue. He stated that if it takes four Councilmembers or a majority of Council to sponsor a study issue, in theory, that would mean the study issue would be approved. He also expressed concern that it might lead to perceived violations of the Brown Act.

Jim Griffith believed the issue is the ease of approving study issues and the ability of a single person to mandate how staff time is spent. He felt that the current system allows for potential abuse of City staff time. Griffith stated that staff time spent drafting unsupported study issues could be better spent providing services. He supported requiring two Councilmembers to sponsor a study issue.

Public hearing closed at 7:36 p.m.

MOTION #1: Vice Mayor Hamilton moved, and Councilmember Whittum seconded, to approve Alternative 1: maintain the status quo – Council-generated study issues can be initiated by a sole Councilmember.

Vice Mayor Hamilton addressed the previous discussions focusing on the number of study issues. She stated that some study issues had been on the calendar for four to five years and outlasted the Councilmember who proposed the issue. Vice Mayor Hamilton noted that it is true that a Councilmember could require staff to draft a number of study issue summaries on a whim. However, those are few and far between and she did not think that possibility outweighed the benefit of having Council champion a cause. She believed the study issue ranking process is very good at filtering and vetting the issues that are of less importance. Vice Mayor Hamilton stated that Council has a responsibility to the community to bring their issues to staff and have those issues examined and addressed.

Councilmember Moylan spoke in opposition and believed the issue is the purpose of the study issue process. He stated any resident or Councilmember can suggest an idea. He explained that the study issue process is a way to focus staff time so Councilmembers and residents continually come up with new ideas throughout the year.

Councilmember Moylan further stated that every year the number of study issues grows, and if three or more Councilmembers were required to sponsor an issue that would necessitate quarterly meetings. He believed the study issue process is complicated enough and any additional meetings would be unnecessary and wasteful.

Councilmember Moylan believed Council should make the smallest adjustment necessary to fix the study issue process, and with the growing numbers of study issues, two Councilmembers should be required to sponsor a study issue.

Councilmember Howe spoke against the motion and supported requiring a minimum of two Councilmembers to sponsor a study issue. He asked Vice Mayor Hamilton if this motion were to pass would she consider adding that a study issue can be sponsored by Councilmembers in some type of open meeting or in writing.

Vice Mayor Hamilton responded that the intention of the motion was to leave it status-quo: a Councilmember could e-mail or verbally give study issues to staff. She clarified that this could be done outside of a meeting.

Councilmember Swegles preferred needing three Councilmembers to sponsor a study issue with a minimum of two. He spoke in opposition to the motion and thought the data spoke for itself. He does not believe the current study issue process is workable and action is needed to address the use of valuable staff time.

Councilmember Whittum supported the motion citing that the Councilmembers have diverse experiences and speak for different segments of the community. If a colleague spoke to their area of expertise he would defer to them based on their experience and background. He expressed that in a Council and Manager relationship it is very difficult to translate public input into action, and the study issue process is an excellent tool to do that.

Mayor Spitaleri supported the motion, saying the issue concerning the amount of study issues last year was a unique situation. He stated he believes in keeping an open-government and allowing residents to request study issues. He also stated it is important to bring issues to Councilmembers instead of lobbying for study issue votes. Mayor Spitaleri opposed having three or four Councilmembers necessary to sponsor a study issue because it would stifle input.

Mayor Spitaleri preferred to look at the system itself and not the amount of study issues. He suggested regulating the amount of study issues by looking at the deadline for Councilmember-proposed study issues: three, four or possibly five weeks in advance of the public hearing. He also suggested that if a study issue hadn't been heard in two or three years then it should automatically be dropped.

MOTION FAILED.

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

MOTION #2: Councilmember Lee moved, and Councilmember Howe seconded, to approve Alternative No. 2, modified as follows: Council-generated study issues must receive the support of two Councilmembers in order for staff to prepare a study issue paper and for the issue to be considered at the Council Study Issues Workshop.

Councilmember Lee remembered the origination of the concern regarding the large number of study issues. He stated there were 120 study issues of which only 20-plus issues were studied. Due to that fact, staff's original recommendation required four Councilmember to sponsor a study issue. He thought having two Councilmembers sponsor a study issue would be optimal.

Councilmember Howe noted the cost of creating so many study issues. He stated if Sunnyvale doesn't support the two-Councilmember proposal then the Council would be doing the tax-payers a disservice.

Vice Mayor Hamilton said she opposed the motion. She asked Councilmember Lee if study issues could be identified in open session, e-mail, or just verbally.

Councilmember Lee responded that the intent was to keep the creation of study issues as informal as possible. An e-mail would be fine, and an open session would not be necessary.

VOTE: 5-2 (Vice Mayor Hamilton and Councilmember Whittum dissented)

COUNCILMEMBER REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE ASSIGNMENTS

Councilmember Howe reported on the Local Agency Formation and Development Commission (LAFCO). He stated LAFCO will be voting on the City of San Martin's final portion of incorporation, and the staff recommendation opposes the incorporation. The process has been an ongoing for the past two years.

Councilmember Swegles reported on the Ombudsman Program and their fund raising. He gave an example how the Ombudsman Program helps senior citizens (some with dementia) with meals, bathing, dressing, physical care, and ensuring that medications and toxins are not accessible for accidental consumption. These services are expensive and range from \$2,500 to \$10,000. He noted this is a tragic situation and urged residents to let the governor of California know that this is a program that should not be cut.

Councilmember Moylan reported on the struggle to determine 2010 VTA Board Members. He stated, most recently, the VTA Administration and Finance Committee decided to put the issue off until next year. Councilmember Moylan stated he and his colleagues on the Policy Advisory Committee are working hard to ensure proper representation on the 2010 VTA Board, and giving higher priority to Bus Rapid Transit and a Community Bus Line between Moffett Park and Downtown Sunnyvale.

NON-AGENDA ITEMS & COMMENTS

COUNCIL: Councilmember Lee announced he had been serving in the Naval Reserve for the past 19 years and he recently received Presidential Mobilization Orders. He will be mobilized to start active duty in January 2009 for the Multi-National Forces in Iraq.

Councilmember Lee stated his term of service will last at least six to 12 months. Due to his deployment, he will be not present for a substantial period of time, and asked the City Attorney to clarify the Military Leave Provision for Councilmembers and how the City would approach this issue.

City Attorney David Kahn stated there are a number of laws that affect Military Leave: federal law; state law; and the City Charter. If Council so directed he would prepare a memo outlining various options available to Council and the memo would be ready for the next Council meeting.

Mayor Spitaleri requested the City Attorney to proceed with the preparation of the memo.

STAFF: None

INFORMATION ONLY REPORTS/ITEMS

- Tentative Council Meeting Agenda Calendar
- Draft Minutes of the Board of Library Trustees Meeting of November 17, 2008
- Draft Minutes from Arts Commission Meeting of November 19, 2008

ADJOURNMENT

Mayor Spitaleri adjourned the Council Meeting to the Onizuka Local Redevelopment Authority at 7:59 p.m.

Katherine Bradshaw Chappellear
Interim City Clerk

Date