

APPROVED MINUTES*
SUNNYVALE CITY COUNCIL
TUESDAY, FEBRUARY 3, 2009

7 P.M. COUNCIL MEETING

CALL TO ORDER

SALUTE TO THE FLAG

Mayor Spitaleri led the salute to the flag.

ROLL CALL

PRESENT:

Mayor Anthony Spitaleri
Vice Mayor Christopher Moylan
Councilmember John Howe
Councilmember Ron Swegles
Councilmember Melinda Hamilton
Councilmember David Whittum
Councilmember Dean J. Chu

ABSENT:

None

STAFF PRESENT:

City Manager Gary Luebbers
Assistant City Manager Robert Walker
City Attorney David Kahn
Director of Community Development Hanson Hom
Interim Library Director Susan Denniston
Interim City Clerk Katherine Bradshaw Chappellear

SPECIAL ORDER OF THE DAY

Mayor Spitaleri presented Interim Library Director Susan Denniston with a proclamation recognizing February and March 2009 as "Silicon Valley Reads" Months.

PUBLIC ANNOUNCEMENTS

Kevin Jackson announced the Mary Avenue Bicycle and Pedestrian Bridge will hold their grand opening on Thursday, April 30 at 3 p.m.

Jackson announced the Borregas Bridge in Moffett Park is scheduled to be completed in the middle of March and suggested the City host some type of grand opening recognition.

Tammy Gaw, with Sunnyvale Rotary, announced the Sunnyvale Armory is in dire need of public donations of food or money in order to assist with feeding the homeless. Gaw stated there has been a large increase in the number of those seeking assistance.

CONSENT CALENDAR

Councilmember Howe pulled Consent Calendar Item 1.C.

MOTION: Vice Mayor Moylan moved, and Councilmember Swegles seconded, to approve the Consent Calendar, with the exception of Item 1.C.

VOTE: 7-0

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

Fiscal Items

- 1.B. RTC 09-034 List of Claims and Bills Approved for Payment by the City Manager - List No. 438**

Staff Recommendation: Council reviews the attached lists of bills.

Other

- 1.C. RTC 09-033 Amended Work Plan: Sunnyvale Affordable Housing Strategy / Sunnyvale Housing Sub-Element**

Councilmember Howe explained he asked for this amended work plan last year. Attachment B lists what Community Development is currently doing and/or planning to do. Councilmember Howe stated staff has been diligently performing outreach efforts into the community and as a result, two outside groups have commented positively on the outreach efforts. Councilmember Howe commended staff on the work done on this item and suggested staff considers the concept of obtaining foreclosed properties.

Mayor Spitaleri offered time for public comments.

No speakers came forward.

MOTION: Councilmember Howe moved, and Vice Mayor Moylan seconded, to approve Alternative 1: Council approves the modified work plan as outlined in Attachment A.

VOTE: 7-0

- 1.D. ORDINANCE NO. 2889-09 Adoption of Ordinance 2889-09 Amending The Precise Zoning Plan, Zoning Districts Map, To Rezone Certain Property Located At 127 W. California Avenue From R-3 (Medium Density Residential) To R-3/PD (Medium Density Residential/Planned Development) Zoning District**

Staff Recommendation: Council approves the second reading of Ordinance No. 2889-09.

STAFF RESPONSES TO PRIOR PUBLIC COMMENTS

None

PUBLIC COMMENTS

Patrick Meyering stated a recent report from the City Attorney's Office was flawed. Meyering explained the report described a suggested study issue, made during the December 2, 2008, Council meeting, which suggested drafting an ordinance prohibiting any City official from retaliating against any City volunteer for disclosing any information about City actions, which violates federal, state or local laws. Meyering stated the study issue suggestion was made because volunteers currently do not have any protections. Meyering explained City Attorney Kahn incorrectly reported the suggested study issue included City employees and inappropriately urged Council not to support the study issue, because City employees are already protected against retaliation under state law. Meyering stated City Attorney Kahn declined to correctly describe the suggested study issue to Council as it was actually made. Meyering stated City Attorney Kahn had no authority to change a proposed study issue, which had already been sponsored by Council. Meyering explained City Attorney Kahn's false claim the suggested study issue included City employees led directly to his recommendation to drop the proposed study issue. Meyering stated City Attorney Kahn also did not complete the section on the City's study issue form as to what precipitated the proposed study issue.

Meyering explained the suggested study issue was made because of a recent event with the City's Housing and Human Services Commission, in which the public was denied the right to speak at a regularly-scheduled public meeting. Meyering stated this was a clear violation of California state law. Meyering explained the assistant city manager and previous city manager retaliated against those commission members who reported the violation, which is a perfect example of why the proposed ordinance is needed.

Tom Greene, Trinity Church of Sunnyvale, announced the church had completed its relocation and is now open at 477 N. Mathilda Ave.

Greene offered to help the youth of Sunnyvale and invited Council to visit the church and youth room at the new facility. Greene spoke about the church's outreach efforts in assisting the youth of Sunnyvale.

Councilmember Howe thanked Greene for his assistance with youth.

PUBLIC HEARINGS/GENERAL BUSINESS

- 2. ORDINANCE NO. 2890-09 Adoption of Ordinance 2890-09 Amending the Precise Zoning Plan, Zoning Districts Map, To Rezone Certain Property Located at 615 Dunholme Way from R-0 (Low Density Residential) to R-0/PD (Low Density Residential/Planned Development) Zoning District**

Mayor Spitaleri confirmed with City Attorney Kahn the title of the ordinance was read previously and will not need to be read again. City Attorney Kahn explained this item is before Council again because when it was first introduced, it did not receive a unanimous vote.

Public hearing opened at 7:44 p.m.

No speakers

Public hearing closed at 7:44 p.m.

MOTION: Councilmember Hamilton moved, and Vice Mayor Moylan seconded, to approve the second reading of Ordinance No. 2890-09

VOTE: 7-0

3. RTC 09-036 Annual Review of City's Code of Ethics and Conduct for Elected and Appointed Officials

Assistant City Manager Robert Walker presented the staff report and explained this item would typically be on the Consent Calendar; however, last year, Council moved this item to the public hearing section because staff had made changes to both the Code of Conduct and Code of Ethics, blending the two documents into one. Assistant City Manager Walker explained Council specifically requested staff bring this item back this year in order to consider further revisions. Assistant City Manager Walker explained the City's nine boards and commissions reviewed this document and no substantive recommendations were requested.

Councilmember Whittum verified with Assistant City Manager Walker staff does not provide formal training to commission chairs on verbal counseling with respect to board and commission members. Councilmember Whittum verified the Human Resources Department is aware commission chairs counsel, when required, their fellow board or commission members. Assistant City Manager Walker stated staff is not opposed to providing training; however, this is not an area in which staff has yet provided training. Councilmember Whittum verified with Assistant City Manager Walker that all board and commission members do receive anti-harassment training.

Public hearing opened at 7:48 p.m.:

Kevin Jackson stated he is a member of the Bicycle and Pedestrian Commission (BPAC), but was speaking on his own behalf. Jackson stated the public should be able to address Council on matters that are important to them, without concern they are holding up Council from adjourning a meeting. Additionally, board and commission members should not be denied the opportunity to speak in front of Council at the point of decision. Currently, only commission chairs may speak at the Council meeting. Jackson urged Council to reconsider the board and commission speech restrictions.

Councilmember Whittum verified with Jackson he believes board and commission members are under the impression they were not able to attend this meeting and express their views because only the chair is eligible to speak at any Council meeting.

Councilmember Whittum verified with Jackson, as chair, he would welcome a fellow commission member offering Council a differing opinion than what he presented as chair of the commission.

Councilmember Whittum inquired if Jackson felt there would be a financial benefit to the City if the commission had less detailed minutes and instead allowed commission members to speak at Council meetings? Jackson responded less detailed minutes could produce a better product and anyone who felt something was left out could attend the Council meeting and express their views.

Councilmember Swegles inquired as to why the BPAC members did not take any action when they reviewed this item. Jackson stated the commission was only asked to review the report.

Councilmember Hamilton stated both Council and boards and commissions adhere to a policy that states once an action is taken, the members will support that action. Councilmember Hamilton stated she understands the desire to express an opposing point of view; however, that is in conflict with the policy of support. Jackson explained he is not able to represent all of the opinions of the commission members and it is his opinion that opposing viewpoints would not be a regular occurrence. Jackson stated there is great value in allowing the board and commission members the ability to speak directly to Council at the point of decision.

Councilmember Swegles verified with Assistant City Manager Walker the boards and commissions were offered the opportunity to comment on this report. Additionally, staff urged the boards and commissions to put the review of this item on their agendas as a public hearing item in order to allow an opportunity for additional input.

Arthur Schwartz stated he does not agree with the policy of only allowing the board or commission chair to speak before Council and not the board or commission members. Schwartz stated detailed minutes do not carry the same degree of information as Council would obtain from listening to a speaker. Schwartz stated the same restrictions for Council should not be placed on volunteer board and commission members.

Jim Griffith, Chair of the Board of Library Trustees, stated during the board's recent meeting, staff did not give direction to the board to take a vote. Griffith stated he attended the Housing and Human Services Commission meeting and they were also not given any direction, but the commission did chose to take a vote on their own.

Public hearing closed at 8:00 p.m.

MOTION: Councilmember Whittum moved to approve Alternative 2: Council approves revisions to the Code of Ethics and Conduct for Elected and Appointed Officials as depicted by Attachment A

with:

Page 9 - removal of sentence which restricts free speech of board and commission members.

Page 13 – change “no speaker will be turned away ...” to read “no speaker will be turned away or stifled ...”

Page 16 – Remove the sentence “Counseling, verbal reprimands and written warnings may be administered by board and commission chairs (or their designees) to board and commission members failing to comply with City policy”.

add

Councilmembers should disclose when an applicant has donated to a Councilmember's campaign.

MOTION FAILED due to lack of a second.

MOTION: Vice Mayor Moylan moved to approve Alternative 2: Council approves revisions to the Code of Ethics and Conduct for Elected and Appointed Officials as depicted by Attachment A
with

- When a member of the public is at the lectern, the communication is to flow from speaker to the Council only. Councilmembers may ask questions for clarification but not in order to make statements or to ask questions which would enable a speaker to evade the time limit.
- Members of the public have a constitutional right to due process (Council to consider public input before voting on an issue).

Vice Mayor Moylan stated this report is a merger of ethics and conduct documents; however, there are many other best practices that should be enumerated but they do not rise to the level of being unethical. Vice Mayor Moylan requested staff develops a list, from all the City's various policies and any e-mails Council wants to submit, of the City Council operating rules, and then return to Council with the list for approval.

Councilmember Chu stated he would second the motion with the following amendment: modify language on page 9, sentence which begins "only the chair or his/her appointee shall speak ...," to include: allow board/commission members to attend a Council meeting and express their opinions; whereas, they identify themselves as a board or commission member and note whether they are speaking in the majority or minority regarding the issue.

Vice Mayor Moylan stated he would not accept the friendly amendment. Vice Mayor Moylan explained part of the policy was designed to address a previous chronic issue during Council meetings, in which a number of board and commission members would repeat the same opinion on an item; thereby elongating the meeting and taking time from public speakers on other subjects.

FORMAL AMENDMENT: Councilmember Chu moved, and Councilmember Whittum seconded, to amend language on page 9, sentence which begins "only the chair or his/her appointee shall speak ...," to include: allow board/commission members to attend a Council meeting and express their opinions; whereas, they identify themselves as a board or commission member and note whether they are speaking in the majority or minority regarding the issue.

Mayor Spitaleri inquired about the legal issues that might arise from dissenting opinions being expressed after an action has been taken. City Attorney Kahn explained once a decision has been made by Council, dissenting opinions will not affect the outcome of the decision.

Vice Mayor Moylan expressed his opposition to the amendment and stated it would undo the solution to a problem that was created by many board and commission members repeating similar viewpoints, which elongated already lengthy agendas. Vice Mayor Moylan stated the concern is over losing public speakers on items, due to the lengthy meetings.

Vice Mayor Moylan expressed the need for detailed minutes and explained how useful they are now and from the past. Vice Mayor Moylan stated he did not learn anything new this evening from the board and commission members. He already read the comments from the detailed commission minutes he received.

Councilmember Howe inquired if the Council agenda reflects the 9:30 p.m. vote by Council to determine whether to continue on with the agenda. Assistant City Manager Walker stated a notation should be on the agenda and it will be corrected. Councilmember Howe expressed his support for the amendment and stated the local level of government is the only place where the public can address issues and express their opinions, which is important to preserve.

Councilmember Whittum expressed his support for the amendment.

VOTE: 5-2 (Councilmember Swegles and Vice Mayor Moylan dissented)

Restated MOTION: Vice Mayor Moylan moved to approve Alternative 2: Council approves revisions to the Code of Ethics and Conduct for Elected and Appointed Officials as depicted by Attachment A

with

- When a member of the public is at the lectern the communication is to flow from speaker to the Council only. Councilmembers may ask questions for clarifications but not in order to make statements or to ask questions which would enable a speaker to evade the time limit.
- Members of the public have a constitutional right to due process (Council to consider public input before voting on an issue).
- Amend language on page 9, sentence which begins “only the chair or his/her appointee shall speak ...,” to include: allow board/commission members to attend a Council meeting and express their opinions; whereas, they identify themselves as a board or commission member and note whether they are speaking in the majority or minority regarding the issue.

Councilmember Swegles offered a friendly amendment to remove the word “counseling” on page 16.

Vice Mayor Moylan accepted the friendly amendment.

Restated MOTION: Vice Mayor Moylan moved to approve Alternative 2: Council approves revisions to the Code of Ethics and Conduct for Elected and Appointed Officials as depicted by Attachment A

with

- When a member of the public is at the lectern the communication is to flow from speaker to the Council only. Councilmembers may ask questions for clarifications but not in order to make statements or to ask questions which would enable a speaker to evade the time limit.
- Members of the public have a constitutional right to due process (Council to consider public input before voting on an issue).
- Amend language on page 9, sentence which begins “only the chair or his/her appointee shall speak ...,” to include: allow board/commission members to attend a Council meeting and express their opinions; whereas, they identify themselves as a board or commission member and note whether they are speaking in the majority or minority regarding the issue.
- Remove the word “counseling” on page 16.

Councilmember Hamilton stated a number of changes are being made to this document and inquired as to how this document will return to Council. Assistant City Manager Walker stated it will return to Council on the consent calendar.

VOTE: 6-1 (Councilmember Whittum dissented)

Vice Mayor Moylan explained staff will return to Council with a short list of operating rules and any Councilmember who wishes to submit suggestions to the list will be able to do so.

COUNCILMEMBER REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE ASSIGNMENTS

Councilmember Swegles announced the Council on Aging recently met and discussed concerns over the ombudsmen program being eliminated. Councilmember Swegles stated the Council on Aging also discussed the funding cuts that were made by United Way of Silicon Valley and the job losses seem to be geared toward seniors.

Vice Mayor Moylan spoke about the recent Santa Clara Valley Transportation Authority (VTA) meeting. Vice Mayor Moylan explained Sunnyvale is part of the north county cities group with five other cities, including City of Palo Alto, City of Mountain View, City of Los Altos, City of Los Altos Hills, and City of Santa Clara. The northern city group has regular meetings and has decided to implement the governance plan. Should all the cities approve this document, then in December the six cities will vote for three members to sit on the board the following year. The vote will be weighted by city population. Vice Mayor Moylan explained a city will be able to nominate a person who has had at least a year of experience on the VTA, or a predecessor agency, which means that the members will have the necessary experience for this board. Vice Mayor Moylan stated if he should be reelected, he would apply to serve on the VTA again.

NON-AGENDA ITEMS & COMMENTS

COUNCIL: Councilmember Howe requested the mayor consider working with the city manager on recognizing the groups that have given considerable amounts of time and/or resources in working with the youth of Sunnyvale.

Councilmember Whittum passed out information to Council on *Robert's Rules of Order* and stated he is looking forward to the upcoming parliamentary training being provided by the city attorney.

Councilmember Swegles requested the meeting be closed in honor of Bessie Roberts. Councilmember Swegles offered a brief history of Bessie Robert's life in Sunnyvale.

STAFF: None

INFORMATION ONLY REPORTS/ITEMS

- Tentative Council Meeting Agenda Calendar
- Draft Minutes of the Arts Commission Meeting of January 21, 2009
- RTC 09-032 Review of Board and Commission Bylaws (Information Only)
- Summary - Council Study Session of January 27, 2009

ADJOURNMENT

Mayor Spitaleri adjourned the Council meeting in memory of Bessie Roberts at 8:10 p.m.

Katherine Bradshaw Chappelle
Interim City Clerk

Date