

APPROVED MINUTES*
SUNNYVALE CITY COUNCIL
TUESDAY, FEBRUARY 10, 2009

6 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 Organization: Sunnyvale Managers Association (SMA)

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 Christopher Moylan
Councilmember John Howe
Councilmember Ron Swegles
Councilmember Melinda Hamilton
Councilmember David Whittum
Councilmember Dean Chu

ABSENT:

None

STAFF PRESENT:

City Manager Gary Luebbers
Assistant City Manager Robert Walker
City Attorney David Kahn
Director of Community Development Hanson Hom
Director of Finance Mary Bradley
Interim City Clerk Katherine Bradshaw Chappellear

CLOSED SESSION REPORT FOR FEBRUARY 10, 2009

Conference with Labor Negotiator pursuant to Government Code Section 54987.6; Negotiator: Erwin Young, Director of Human Resources; Employee Organization: Sunnyvale Management Association (SMA)

Vice Mayor Moylan indicated direction was given but no action was taken.

PUBLIC ANNOUNCEMENTS

Each speaker is limited to three minutes for announcements of community events, programs, or recognition.

Councilmember Whittum announced comments for the environmental impact report scoping California High Speed Rail are due March 6, 2009. For more information visit the website www.cahighspeedrail.ca.gov.

Councilmember Swegles invited everyone to the Rotary Crab Feed on February 21, 2009 at St. Cyprian's auditorium. Tickets are available from any Rotarian or Councilmember Swegles.

CONSENT CALENDAR

Councilmember Chu pulled Consent Calendar Items 1.A and 1.B. to abstain from voting since he was not on Council at the time of the meetings.

Councilmember Howe pulled Consent Calendar Item 1.F.

Councilmember Whittum pulled Consent Calendar Item 1.G.

MOTION: Vice Mayor Moylan moved and Councilmember Hamilton 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 Council Meeting Minutes of October 21, 2008

1.B. Approval of Council Meeting Minutes of October 28, 2008

Councilmember Hamilton requested an amendment to page 9, third paragraph from the bottom of the page to read “went on to describe” instead of “went described”

MOTION: Councilmember Howe moved and Councilmember Hamilton seconded to approve Consent Calendar Item 1.A. as amended by Councilmember Hamilton and Vice Mayor Moylan and Consent Calendar Item 1.B. as submitted.

VOTE: 6-0 (Councilmember Chu abstained)

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

Fiscal Items

1.D. RTC 09-037 List of Claims and Bills Approved for Payment by the City Manager - List No. 439

Staff Recommendation: Council reviews the attached lists of bills.

1.E. RTC 09-039 Approval of Budget Modification No. 25 to Accept Bay Area Air Quality Management District Grant Funding for Reduction of Green House Gas Emissions

Staff Recommendation: Council approves Budget Modification No. 25 to accept \$55,550 in BAAQMD grant funds and appropriates it to Project 827640 – Environmental Sustainability.

1.F. RTC 09-042 Approval to Accept Office of Economic Adjustment’s Phase 2 Augmentation Funding and Approval of Budget Modification No. 27

Councilmember Howe inquired about the funding for the program.

Director of Community Development Hanson Hom explained a portion of the funding will be coming from housing mitigation funds.

Public comments opened.

No speakers

Public comments closed.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded to approve staff recommendation: Council approves Budget Modification No. 27 to incorporate Onizuka Air Force Station Base Realignment and Closure (BRAC) Phase 2 Augmentation Funding in the BRAC Project Budget.

VOTE: 7-0

Contracts

1.G. RTC 09-040 Award Bid No. F0811-31 for Application of Slurry Seal on City Streets

Councilmember Whittum asked why this year's bid rose 16 percent from last year's price, even though the cost of oil went down. He also requested clarification on the prevailing wage issue.

Director of Finance Mary Bradley explained last year's bid was exceptionally good. The particular bidder was substantially lower than other bidders in an effort to win the job. Director Bradley noted last year's bidder also bid this year and was in line with the other vendors. Director Bradley stated it's not that the bid has gone up 16 percent from last year; it's that last year's bid was extremely low.

Director Bradley deferred to the City Attorney for specifics regarding prevailing wage, but did mention that new legislation has recently included street work under the Public Works prevailing wage requirement.

City Attorney David Kahn agreed with Director Bradley's explanation and added that Councilmember Whittum is correct that maintenance bids are exempt from prevailing wage under the City Charter. However, the state labor code requires the City's adherence to the prevailing wage.

MOTION: Councilmember Whittum moved and Councilmember Swegles seconded to approve staff recommendation: Council awards a contract, in substantially the same form as the attached draft and in the amount of \$0.104 per square foot for a total cost of \$213,265 to Graham Contractors, Inc., for the application of slurry seal on streets throughout Sunnyvale; and including the base plus designated alternate streets.

VOTE: 7-0

STAFF RESPONSES TO PRIOR PUBLIC COMMENTS

City Manager Gary Luebbers spoke to a public comment from a prior council meeting regarding health benefits for Councilmember Chu. City Manager Luebbers stated the benefits Councilmember Chu receives are the minimum that PERS allows.

PUBLIC COMMENTS

Adam Berkan, Chairman of the Morse Park Neighborhood Association, understood the City's financial situation with budget cut-backs etc., but stated a park in his neighborhood is sorely needed. Berkan continued there currently isn't any park in that area and a park would be greatly appreciated.

PUBLIC HEARINGS/GENERAL BUSINESS

2. **RTC 09-038** **2008-0881: Appeal by the applicant of a decision of the Planning Commission denying an application for a Special Development Permit to allow the sale of beer and wine at an existing gas station and convenience store. The property is located at 698 N Fair Oaks Avenue (at Caliente Dr) in a C-1/PD (Neighborhood Business/Planned Development) Zoning District**

Councilmember Howe recused himself, stating he owns real property within 500 feet of the property being discussed.

Planning Officer Trudi Ryan presented the staff report.

Vice Mayor Moylan asked how staff determined their recommendation of approval.

Planning Officer Ryan stated the gas station is in a relatively safe location and the physical area for alcohol sales within the store is minimal.

Councilmember Chu questioned the Director of Public Safety Don Johnson regarding an increase in localized criminal activity that is associated with alcohol sales.

Director Johnson stated they looked at several local service stations and found no increase in alcohol-related criminal activity correlating to the sale of alcohol.

Councilmember Hamilton asked why staff deferred to Alcohol Beverage Control's (ABC) alcohol-concentration requirements when the City's own requirements are more restrictive.

Planning Officer Ryan explained that in some ways ABC's requirements are more restrictive but in this case the City was focusing on off-site alcohol sales only.

Councilmember Swegles asked if there were a concern having so many alcohol outlets so close to schools.

Planning Officer Ryan stated some of the adjacent neighbors did express anxiety about the locations proximity to the schools. Planning Officer Ryan explained that students going to school generally walk in a different direction and do not directly pass the gas station.

Gregg Kays spoke on behalf of the applicants/owners, Mr. and Mrs. Dhanota. Kays explained this is a family owned business and an alcohol license is important for them to generate more revenue. He stated there is substantial clientele support indicating it's a matter of convenience for customers to stop and buy gasoline with the option to buy beer and wine.

Kays remarked the business has been mischaracterized. Kays stated he didn't think suddenly because a corner gas station has the ability to sell small quantities of beer and wine that there would be a massive influx of new customers or revenue. Generally, a person pulls into a service station to get gas. He stated the Dhanotas are fine with each and every condition imposed by the City and are willing to do everything they can to ensure the business' success.

Councilmember Moylan requested clarification on the amount of potential revenue to be generated from the sale of alcohol.

Gregg Kays answered this additional income is only meant to supplement the owner's current job and possibly projects to only an extra few hundred dollars a week.

Public hearing opened at 7:37 p.m.

Debi Deutsch spoke on behalf of Janet Ayres, the previous appellant. Deutsch noted Ayres spoke and attended the December 8, 2008, Planning Commission meeting when the Special Development Permit was denied unanimously, 6-0. Deutsch mentioned there are already three other stores that sell off-site alcohol in addition to two restaurants that serve alcohol, all within 300 feet of the Valero station. She then reiterated her opposition to having yet another off-site alcohol license in that area.

Vice Mayor Moylan explained the issue isn't about the number of alcohol vendors in the neighborhood but rather if this gas station will adversely affect persons residing or working in the surrounding area, lower property values or be detrimental to public health, safety or welfare.

Russell Van Scoy stated he noticed in the last few years that panhandling and vagrancy had increased at that specific location. Van Scoy also stated there are already too many places to buy alcohol in that area.

Daniel Rodriguez stated he doesn't see how an additional alcohol retailer would benefit the community. Rodriguez mentioned the gas station has been there for years without selling alcohol and doesn't see the purpose in doing so now.

Councilmember Swegles questioned the inventory needed to generate the kind of income the applicants stated and was it possible considering the limited amount of physical space available.

Public hearing closed at 8:13 p.m.

MOTION: Councilmember Whittum moved and Councilmember Hamilton seconded to approve Alternative No.3: Council denies the appeal and upholds the decision of the Planning Commission denying the Special Development Permit.

Councilmember Whittum stated the current vagrancy issue at the gas station is not the applicants' fault since they do not currently sell alcohol, but it was the result of too many off-site alcohol sales clustered near new homes and schools.

Councilmember Hamilton stated the Special Development Permit is trying to add alcohol sales to an area that is already extremely concentrated. Councilmember Hamilton

determined that the other two previous gas stations where alcohol sales were approved did not have community opposition. She was inclined to side with this neighborhood's concern and agreed with the Planning Commission's decision.

Vice Mayor Moylan stated he did not believe there would be a public safety issue with giving this vendor an alcohol license. However, he couldn't say beyond a reasonable doubt that something couldn't happen. Vice Mayor Moylan conceded that he might be making the wrong decision but supported the motion purely based according to how strongly the findings must be in order to approve the appeal.

Mayor Spitaleri opposed the motion stating that anyone who wants to expand their business should have the right to do so, if done properly, and stated he believed in helping small businesses within the community.

VOTE: 5-1 (Mayor Spitaleri dissented and Councilmember Howe recused)

3. RTC 09-043 2008-0485 Business Identification on Ground Signs and Size of Street Address Numbers (Study Issue)

Associate Planner Mariya Hodge presented the staff report.

Councilmember Swegles asked if Lawrence Expressway adheres to the same signage restrictions as those required in other parts of the City.

Associate Planner Hodge stated the Lawrence Expressway sign standards are the same as the rest of the City except El Camino Real. However, Lawrence Expressway is zoned industrial, not commercial, so the amount of tenant signage is unlimited.

Hanson Hom added that tenant signage is restricted in commercial districts but not restricted in industrial districts.

Councilmember Hamilton addressed options regarding a possible signage amortization program.

Vice Mayor Moylan asked if the City could link a condition requiring updates to street addresses any time sign changes occur.

Associate Planner Hodge explained any new sign would be subject to whatever requirements are adopted; but typically the City doesn't require people to upgrade their address numbers unless they are making structural changes to the sign, as opposed to simple copy changes.

City Attorney Kahn stated if there were a modification to the sign ordinance then there could be a reasonable nexus to make the street address update an additional requirement.

Councilmember Swegles addressed the possibility of electronic signage and whether it would matter how the properties were zoned.

Associate Planner Hodge responded that currently the City Code prohibits any flashing, moving or animated signs. Associate Planner Hodge noted it wasn't something addressed in this study issue but generally electronic signage has some type of moving element and is

prohibited whether the property is zoned industrial or commercial. However, an electronic sign that is static and does not move or change could be considered. Additionally she explained the only difference between industrial and commercial signage requirements is the number of tenants per sign.

Councilmember Whittum asked the purpose of requiring address ground signage at a minimum of 4 feet above the ground.

Associate Planner Hodge replied due to most of the outreach asking for address numbers on the top of signs, and having some really tall signs on El Camino, they looked for some type of range where address numbers could be most visible. That was the logic of requiring address numbers on ground signs to have a 4-foot minimum height and a 15-foot maximum height.

Councilmember Whittum asked for staff's recommendation on counting non-roman characters on signage.

Associate Planner Hodge went into detail explaining the specifics of how line signage is determined by numbers, characters, syllables and the counting of items of information.

Councilmember Whittum expressed concern regarding the aesthetic impact of signage on nearby residential zoning.

Director Hom answered the location design review of free standing signs would consider light, glare and the potential impact on adjacent residential neighborhoods. However, Director Hom noted there is not an absolute standard for addressing residential signage aesthetics.

Public hearing opened at 8:45 pm.

Joe McKenna, owner of Golden West Collision Center located inside of Sunnyvale Chevrolet, was unaware in 2002 when he started his business that he was unable to have a ground sign in front of the dealership. McKenna elaborated that due to the frontage of the property being 300 feet away from his business and with the current code stating he may only have a sign after 500 feet, he hoped the new proposal would be approved to address his situation.

Councilmember Howe clarified the property owner would need to sign off on the application and it would be for them to determine how to allocate the signage.

Public hearing closed at 8:49 p.m.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded to approve staff recommendation: Alternative No. 1 - Council approves several minor changes to the City's Sign Code. These changes include:

- Council permits up to four tenant names on ground signs;
- Council provides a limited exemption from sign area for display of a center's name on multi-tenant ground signs;
- Council reduces the length of street frontage needed for a second ground sign from 500 feet to 300 feet;
- Council limits the height of a second ground sign for properties along El Camino Real to 15 feet;

- Council adopts a minimum copy height of 4 inches for general ground sign copy;
- Council retains the required copy height of 6 inches for address numbers on ground signs and add required locations for addresses; and
- Council does not adopt an amortization program for address signs.

Vice Mayor Moylan offered two friendly amendments: require as a condition of approval that all address numbers on site meet existing code; and develop a budget modification to consider doing an amortization program in 2010.

Councilmember Howe accepted both friendly amendments.

Councilmember Hamilton offered a friendly amendment to consider various amortization programs including a 15-year program.

Councilmember Howe accepted the friendly amendment.

VOTE: 7-0

COUNCILMEMBER REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE ASSIGNMENTS

Councilmember Swegles announced his appointment to the Bay Area Water Supply and Conservation Agency (BAWSCA).

NON-AGENDA ITEMS & COMMENTS

Council: None

Staff: None

INFORMATION ONLY REPORTS/ITEMS

- Tentative Council Meeting Agenda Calendar
- Draft Bicycle and Pedestrian Advisory Commission Meeting Minutes of January 15, 2009
- Draft Minutes of Housing and Human Services Commission Meeting of January 28, 2009
- RTC 09-041 Opportunity for Council to appeal decisions of the Planning Commission of January 26, 2009 and the Administrative Hearing of January 28, 2009.
- RTC 09-035 Informational Report - Vacancy And Rent Survey

ADJOURNMENT

Mayor Spitaleri adjourned the Council meeting at 8:56 p.m.

Katherine Bradshaw Chappellear
Interim City Clerk

Date