

**APPROVED MINUTES\***  
**SUNNYVALE CITY COUNCIL**  
**TUESDAY, JULY 14, 2009**

**5 P.M. SPECIAL COUNCIL MEETING (Closed Session)**

Closed Session pursuant to Government Code Section 54956.8 – Conference with Real Property Negotiator

Property: Sunnyvale Town Center

Negotiating Parties: City Manager Gary Luebbers, Agency Director; Peter Pau and Ashley Powell.

Sunnyvale Mixed Use LLC

Under Negotiation: Terms of ARDDOPA

**5:30 P.M. SPECIAL COUNCIL MEETING (Study Session)**

Study Session - Parks of the Future

**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 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 Community Services David Lewis  
Director of Public Works Marvin Rose  
Director of Public Safety Don Johnson  
City Clerk Kathleen Franco Simmons

**SPECIAL ORDER OF THE DAY** – Honoring *Serious Materials* and CEO Kevin Surace as “District 13 Small Business of the Year”.

**SPECIAL ORDER OF THE DAY** – Presentation of Check for Muscular Dystrophy.

**CLOSED SESSION REPORT FOR July 14, 2009**

Vice Mayor Moylan reported Council held a closed session earlier in the evening regarding Conference with Real Property Negotiator, the city manager and city attorney, pursuant to Government Code Section 54956.8 – re: Sunnyvale Town Center.

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

**PUBLIC ANNOUNCEMENTS**

Councilmember Chu announced the "Dinner at the Dump" fundraising event hosted by Specialty Solid Waste collected over \$40,000, which will benefit Sunnyvale Community Services, Sunnyvale Rotary Foundation, and Leadership Sunnyvale.

Councilmember Chu announced that day he had attended the grand opening of Terminal B at the San Jose Airport.

Mayor Spitaleri announced Sunnyvale has received a "Solar Champion" award from Environmental California for ranking 21<sup>st</sup> of California cities for the amount of solar rooftops and 19<sup>th</sup> for the amount of kilowatts produced.

**PRESENTATION** - Richard Santos, Director of Santa Clara Valley Water District, provided a presentation regarding the measures the District is taking to combat the ongoing drought and uncertainty of water supplies such as water conservation rebate programs and water recycling.

**CONSENT CALENDAR**

Councilmember Whittum removed Item 1.G. from the Consent Calendar.

MOTION: Vice Mayor Moylan moved and Councilmember Chu seconded the motion to approve the consent calendar with the exception of Item 1.G.

VOTE: 7-0.

- 1.A. MOTION Approval of Council Meeting Minutes of June 2, 2009
- 1.B. MOTION Approval of Council Meeting Minutes of June 9, 2009
- 1.C. MOTION Approval of Information/Action Items – Council Directions to Staff

**Fiscal Items**

- 1.D. MOTION List of Claims and Bills Approved for Payment by the City Manager – List  
RTC 09–178 No. 459 & 460

Staff Recommendation: Council review the attached lists of bills.

**1.E. MOTION Approval of Budget Modification No. 2 to Receive State Homeland  
RTC 09-185 Security Grant Program (SHSGP) Training Funds**

Staff Recommendation: Alternative 1: Approve Budget Modification No. 2 to receive SHSGP funds for the K-9 explosive detection training.

**Personnel**

**1.F. MOTION Employee Benefits Contract Renewals - Life/AD&D, Insurance, Long  
RTC 09-180 Term Disability Insurance, and the Employee Assistance Program**

Staff Recommendation: Alternative 1: Renew the contract through CSAC for Life, AD&D, and Long Term Disability insurance with ING/Reliastar Employee Benefits for the period of July 1, 2009 through June 30, 2012, and renew the contract for the Employee Assistance Program with MHN for the period of July 1, 2009 through June 30, 2012.

**1.G. MOTION Adoption of the Sunnyvale Managers Association (SMA) Memorandum  
RTC 09-181 of Understanding, and Amendment to Salary Resolution**

Councilmember Whittum questioned Staff regarding an item in the contract that included 2% deferred compensation in addition to regular pay and asked if the SMA members presently have that.

Director of Human Resources Erwin Young responded that is a current benefit.

Public comment opened at 7:20 p.m.

No speakers.

Public comment closed at 7:20 p.m.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded a motion to approve Alternative 1: Adopt the Memorandum of the Understanding with the Sunnyvale Managers Association and adopt the related amendment to the Salary Resolution.

Councilmember Whittum stated he would not support the motion because he doesn't believe this is the right time to grant raises in the present budgetary climate.

Councilmember Swegles stated he supports the motion because they did not receive a raise last year whereas others did.

Councilmember Howe stated they have gone a full 18 months without an increase while some of their other benefits have gone up and it has actually decreased their salaries over time.

VOTE: 6-1 (Councilmember Whittum dissented).

**Contracts**

- 1.H. MOTION Award of a Contract for an Automated Materials Handling and Radio  
RTC 09-186 Frequency Identification System for the Department of Libraries  
(F0811-29)**

Staff Recommendation: Award a contract in the amount of \$758,675, excluding applicable taxes, to Bibliotheca, Inc., to provide and install an automated materials handling and radio frequency identification system and approve a project contingency in the amount of \$46,436.

- 1.I. MOTION Award of Bid No. F0806-88 to Furnish Ruggedized Notebook  
RTC 09-182 Computers**

Staff Recommendation: Award a contract to GTSI, Corp. in an amount not to exceed \$105,225, to furnish ruggedized notebook computers for the Department of Public Safety MDT Project.

- 1.J. MOTION Award of a Contract for Maintenance of the City's Radio  
RTC 09-187 Communication Systems (F0806-92)**

Staff Recommendation: Award a contract in the amount of \$180,927, to Motorola, Inc. for maintenance of the City's radio communications systems.

**Contracts: Sunnyvale Works!**

- 1.K. MOTION Award of Sunnyvale Works! Bid No. F0805-78 for Citywide Water Line  
RTC 09-184 Replacement at San Diego Avenue Area**

Staff Recommendation: Award a contract in the amount of \$548,840 to Pacific Underground Construction for the subject project, and authorize the City Manager to execute the contract when all necessary conditions have been met, and approve a project contingency in the amount of \$55,000.

- 1.L. MOTION Award of Sunnyvale Works! Bid No. F0805-72 for Wolfe Road Overhead  
RTC 09-188 Bridge Rehabilitation**

Staff Recommendation: Award a contract in the amount of \$1,022,168 to William P. Young Construction for the subject project, and authorize the City Manager to execute the contract when all necessary conditions have been met, and approve a project contingency in the amount of \$153,325.

**1.M. MOTION Award of Sunnyvale Works! Bid No. F0805-79 for Installation of Curb  
RTC 09-189 Ramps, 2009 Phase 2**

Staff Recommendation: Award a contract in the amount of \$247,970, to SpenCon Construction, Inc. for the subject project, and authorize the City Manager to execute the contract when all necessary conditions have been met, and approve a project contingency in the amount of \$17,030.

**STAFF RESPONSES TO PRIOR PUBLIC COMMENTS**

None.

**PUBLIC COMMENTS**

Dan Hafeman commented on the poor condition of the streets walking from West Sunnyvale to Murphy on Washington Avenue. Walkers encounter broken glass, closed businesses, trash, a partially torn down building, manholes with missing covers, graffiti, and no lighting at night. Mr. Hafeman stated that Sunnyvale wants to be a walkable city, but this is the only way to get downtown on foot.

Councilmember Howe requested that the City Manager have Neighborhood Preservation look at this area and give the Council a report on the status of it and stated that he has walked down Washington Avenue and it is a real hazard.

Tap Merrick apologized for the tone of his comment to Mayor Spitaleri at the June 9, 2009 meeting on the issue of how many minutes an applicant is allowed to speak versus opponents. Mr. Merrick suggested it would be more fair if the Council adopt a loyal opposition provision where there is an opportunity for opposition to have ten minutes to respond in addition to the three minutes individuals are normally allowed.

Mayor Spitaleri responded he tries to adhere to the time rules. If there are several speakers at three minutes each speaking against a project the applicant only has ten minutes to respond to all those issues, so he doesn't see how they can give each citizen ten minutes.

Tap Merrick responded he didn't suggest giving each citizen ten minutes, but where there is one person or group that is better versed in the issue allowing them a loyal opposition clause to present ten minutes of time in addition to their individual three minutes.

**PUBLIC HEARINGS/GENERAL BUSINESS**

**2. MOTION Update of the Housing and Community Revitalization Sub-element  
RTC 09-176 of the General Plan**

Director of Community Development Hanson Hom indicated Staff had recommended continuance of this item until the August 11, 2009 meeting, at which time there will be a full staff report with full Planning Commission recommendation.

Public comment opened at 7:41 p.m.

No speakers.

Public comment closed at 7:41 p.m.

MOTION: Vice Mayor Moylan moved and Councilmember Swegles seconded a motion to approve continuation of public hearing Item #2 until the meeting of August 11, 2009.

VOTE: 7-0.

**3. MOTION                    Consideration of Parks of the Future Study  
RTC 09-183**

Director of Community Services David Lewis presented the staff report.

Vice Mayor Moylan requested a summary of the areas where staff disagrees with the consultant's recommendation.

Jenny Shain, Casual Manager/Special Projects, responded the City disagrees about selling the park, but agrees about keeping the park site housing. The City has not completely agreed regarding the entire proposed park system. The City has not taken the capital project listing in its entirety and has made changes as it moves forward.

Councilmember Whittum asked how rigid the design guidelines might be later. There are three areas in the proposed park system map that have no plan listed for them: the Full Circle Farm, a canal in the eastern part of the city, and also a portion of the Stevens Creek area. Councilmember Whittum asked if the fact that they're not showing on the map precludes the Council from later looking at actions for park space in the future.

Director of Community Services Lewis responded the Council could look at these areas for park space in the future even though they are not in the proposed system map.

Councilmember Whittum asked if the privacy and seclusion of the northeast corner of Murphy Park is a problem in terms of homeless and other activity there, and how that would be resolved with the staff recommendation to sell parts of Murphy Park and Orchard Gardens.

Director of Community Services Lewis responded that is an unused amenity that is used infrequently by the Boy Scouts and more often by people doing things they shouldn't and they would suggest it be looked at in the future. Whether landscaping or redesign of the site, the cost benefit ratio of the alternative would have to be weighed, whether to sell or keep the houses. In that case the City would have to buy four more houses to add to the three that are interspersed in the seven to make it a continuous strip that could be added to the back of the park.

Councilmember Whittum asked if it is necessary that the entire strip be park in order to provide access to the northeast corner of Murphy Park.

Director of Community Services Lewis responded that it is only necessary to have open access, but he is not sure which of the houses that is.

Councilmember Whittum verified with Director Lewis that if the City wants to make park improvements or provide more parks, it would be necessary to raise the park dedication fees, as the current fees only pay for infrastructure and rehabilitation.

Director of Community Services Lewis confirmed other than grants, park dedication fees fund their entire project list. Raising the fees would bring in additional revenue, but that would have to be contrasted against the dollar amount projected in the un-funded projects.

Public comment was opened at 7:52 p.m.

Parks and Recreation Commission Chair Jim Colvin indicated the Commission met June 24, 2009 to discuss the Parks of the Future Study and by unanimous decision, recommend to the Council that the study be accepted with Alternatives 1-16 with an emphasis on Alternatives 1, 10, and 15.

Councilmember Hamilton asked if there was any discussion about selling the park site housing during the June 24<sup>th</sup> meeting, and requested a summary.

Parks and Recreation Commission Chair Colvin responded there was extensive discussion, including would the City benefit from selling in a down economy or whether the City should hold onto the property until a later date when more revenue could be generated and then consider alternatives to park shaping.

Harriett Rowe stated she supports Councilmember Hamilton's fight to hold onto the houses adjacent to Murphy Park. Although statistically it doesn't change the rating of the park, she would like the City to keep the three houses, add them to the park, and perhaps buy more houses in the future when money is available.

Jim Griffith pointed out a contradiction in the report in that it says it will be difficult for the City to meet its need for parks because land is expensive and difficult to find, but it also says the City is going to sell some of the land it has. The City should be very careful in giving up land because it will be difficult to get land back later.

Public comment was closed at 7:56 p.m.

MOTION: Councilmember Swegles moved to go with Staff's recommendations to approve Items 1-16 of the 21 alternatives, including:

- Adopt a 5.34 acres per 1,000 residents of Level of Service (LOS).
- Amend the Open Space and Recreation Sub-Element to include design and development guidelines for all park types.
- Increase park dedication and in-lieu fees from 1.25 to 3.0 acres per 1,000.

With modifications:

- Remove Item 2.
- Defer selling Orchard Park to a time when there is more equitable or higher value on the properties.
- Hold off on selling the Murphy Park housing immediately. Council is willing to sell,

but not at this time.

- Item 15: due to the economy direct staff to prepare an amendment to the Sunnyvale Municipal Code relating to presenting a phase-in of the recommendation to facilitate the 3.0 acres per 1,000 population standard from the current standard of 1.25, and direct Staff to work with Council in regard to the phase-in.

Director of Community Services Lewis asked if Councilmember Swegles had a preferred number to begin the phase-in for the ordinance when it comes back for initial consideration.

Councilmember Swegles stated they should look at what is going on around them.

Councilmember Howe seconded the motion and offered a friendly amendment for Item 3 and Item 4: to leave to the discretion of the City Manager as to when to sell the properties and for the City Manager to inform the Council each year annually through the budget process until it is done.

Councilmember Swegles accepted the amendment.

Councilmember Howe offered a friendly amendment for Item 15 to see the effectiveness of the ordinance increase the current standard of 1.25 acres per 1,000 population to 1.75, increase to 2.25 at the Fiscal Year 2010-2011, to increase to 2.75 at the Fiscal Year 2011-2012, and increase to 3.0 at the Fiscal Year 2012-2013.

Councilmember Swegles accepted the amendment.

Councilmember Howe offered a friendly amendment that it would be effective on that date for properties that do not have an occupancy certification; if they haven't been signed off by that date it goes to the higher number.

City Attorney Kahn responded that generally the vesting of property rights is upon the completion of the application and they could come up with a cut-off criteria rather than the occupancy permit, but they can set a standard for when the new standards would take effect.

Councilmember Howe recommended the City Attorney's suggestion that it be effective on the completion of the application on those deadline dates.

Councilmember Swegles accepted the amendment.

Councilmember Hamilton stated she would not support the motion as these are the two issues that are deal breakers for her.

- She would not remove Item 2 because if staff is including that recommendation to identify the Morse site as a high-priority site, even if it is already a high-priority site, she doesn't mind being redundant.
- She is opposed to selling the park site housing, because while the City would raise money now it would lose the land forever. The Orchard Gardens site especially should not be sold, because although the houses back up to a park building, if the City raises the park number to 3.0 acres per 1,000 the City will get more than twice as much funding as now and at some point that park will need to be renovated.

Councilmember Hamilton stated she thinks those houses should be taken out to open it up, that that is an area underserved by parks and the addition of three houses would be a benefit to that area.

- The Murphy Park site is the same: it would make a park that would be open on three sides and bounded on Central Expressway on the fourth side, which would be a much bigger benefit to the community. She stated that it cannot be done now, but the City has owned those houses for nearly 30 years, and question what the sudden rush is to sell to them now. The City Council provides services and isn't supposed to always go for the finances. She stated that the consultants got it right and she believes selling those houses is a huge mistake.
- Regarding phasing in the 3.0 acres per 1,000 population, Councilmember Hamilton believes that is a huge mistake and cited Director of Community Services Lewis' comment in the study session that the City is decades behind what other cities have been doing and has a huge parkland deficit as a result. She stated sees no reason to not remedy that right now. She does not believe the reason there is no development now is related to the park space issues. She stated the City desperately needs park space and needs to get it while possible. Phasing over three years will cost the City even more park space, so she cannot support anything that doesn't bring it up to 3.0 acres per 1,000 right now.

Councilmember Whittum stated he will oppose the motion and asked to:

- Strike Item 3 and Item 4.
- Keep Item 2.
- Strike the edict to sell Orchard Gardens and Murphy Park.

Councilmember Whittum explained Murphy Park is close to transit and where there will be more density and believes it is a blunder in planning to sell the space and it is also a blunder in terms of the layout of the park, because the privacy in the northeast corner is not good for the use of the park. Councilmember Whittum stated a similar situation pertains to Orchard Gardens. One of the reasons the City has not been spending park dedication fees to dedicate parks is that the fees are used for infrastructure, to fix park building groups. The park dedication fees are used to balance the budget because the largest cost, 95% personnel costs, are out of control. Councilmember Whittum stated he believes to find a nexus between the development and the need for a park is the most logical and direct way. He stated he hopes the City will find consensus that can be used to expand park space, because he believes the public wants more park space.

Councilmember Chu asked of staff that if the rate is phased from 1.25 acres to 3.0 acres what that would do to Item 16, which is to explore the feasibility of expanding a further nexus in a future setting.

Director of Community Services Lewis responded his understanding is it can't go above 3.0 until it has been at 3.0, so in terms of Item 16, which directs staff to do the nexus study and do research to come back to raise it above 3.0, would be rendered moot until the 2012-2013, or whenever 3.0 is reached.

Councilmember Chu offered a suggestion to the maker of the motion that Item 3, Item 4, and Item 15 be taken as a separate vote from the remaining non-controversial items.

Councilmember Swegles responded Item 3 and Item 4 are to direct staff to not sell the property at this time and at the City Manager's discretion to look at it at a future time. It would have to come to Council to allow the property to be sold. It is basically as Councilmember Whittum wanted, not going forward with the sale but postponing it until the market is better. Regarding Item 15, Councilmember Swegles stated he doesn't see the difference whether it is a phase-in now or a phase-in by itself.

Vice Mayor Moylan offered a friendly amendment for Item 3 and Item 4 not to "direct" staff to sell those two housing areas, but to "authorize" staff to sell those at such time as the market has rebounded, based on the possibility that someday those houses could all become owned by the City at City expense and the park could be expanded versus the possibility that they could be sold and the money could be used for parks and recommended use. Vice Mayor Moylan believes the probability of the first circumstance happening is zero and doesn't believe the City will ever own all the properties and it will never turn into a park, and even if it did, it would cost money to do it, whereas if they are sold when the market rebounds, then they can actually do something with it.

Councilmember Swegles accepted the amendment.

Vice Mayor Moylan offered a friendly amendment to change the schedule to increase to 3.0 acres as of July 1, 2010. He stated that the argument against jumping up to 3.0 acres right now is a concern about deterring development, but if the fact that the City's mitigation fee is so far below everyone else is influencing development, then development would be going on in Sunnyvale right now that is not happening elsewhere, and that is not the case. He stated that in case that analysis is flawed one can imagine the possibility of saying this mitigation is going to go up to 3.0 acres in one year and alerting developers they have one year left to do a cheap development in Sunnyvale and see if that has an effect.

Councilmember Swegles stated he would be willing to look at reducing the number of years, phasing it in quicker and increasing to 3.0 acres effective July 2, 2011.

Vice Mayor Moylan assented to Councilmember Swegles' modification to phase in the increase to 3.0 over two years.

Councilmember Hamilton requested clarification from Vice Mayor Moylan on his suggestion. The City does not own all the houses on Murphy Park and does own all the houses on Orchard Gardens, but Vice Mayor Moylan's rationale is the City can't acquire the other houses.

Vice Mayor Moylan responded Councilmember Hamilton is right, that applies only to Murphy Park.

Councilmember Chu made and Councilmember Whittum seconded a Formal Amendment to remove Item 3 and Item 4 from the motion, the rationale being that land is difficult to obtain and open space needs to be preserved. Councilmember Chu stated he doesn't believe the amount of money generated from the sale of the properties will be significant enough to sacrifice the open space and encouraged the Council to support retaining the housing for a future time.

Councilmember Hamilton requested Item 15 also be removed as part of the Formal Amendment.

Councilmember Chu stated those are two different issues and Councilmember Hamilton's request to remove Item 15 could be another Formal Amendment.

Mayor Spitaleri stated his understanding is the recommendation is not to sell the housing now but to authorize the sale in the future when the value may be higher. Mayor Spitaleri verified with Councilmember Chu whether it is his feeling that if this motion is passed the houses will be sold immediately.

Councilmember Chu responded no, his feeling is the City should preserve land it has adjacent to parks for future park use and doesn't think they should give up that right now or any time in the future.

Councilmember Howe spoke regarding the original motion and the Formal Amendment.

- He stated he believes unless the City uses eminent domain, the City will never get the remaining four houses on Murphy Park. The three houses the City is holding onto are zero profit on the rental portion of them and the City has to maintain them to meet standards others do not.
- Orchard Gardens is blocked by the three properties. The Director of Community Development said in the study session if the three houses are taken out and have another building there that blocks it, you have the same problem, so the City is not improving that, yet the Director said the new park over there is less than a quarter mile from Orchard Gardens. The rent that came from the buildings helped fill the City's budget gap, but this year that is being taken out. A complete park is being put in over there and the funds that would be coming from some of these houses potentially could improve that park so it becomes a good regional park instead of one in place where there shouldn't be one to start with.
- He stated the idea behind not selling the properties on Morris Avenue and Murphy Park is a bad one. Councilmember Howe stated doesn't have a problem with taking one fiscal year off, but loans are difficult to get today and what the City is doing is increasing the fees on development during the biggest recession since 1929 and it doesn't make financial and economic sense to hang onto these houses.

Councilmember Hamilton inquired of the City Manager as to when the last time the City made any attempt to talk to the property owners living in the four houses at Murphy Park and what have there responses been.

Director of Public Works Marvin Rose responded the property manager in Public Works makes contact with the property owners on those parcels every year to let them know the City is interested if they contemplate putting those properties on the market. Their responses to date are they are not interested in selling.

Councilmember Hamilton clarified the Formal Amendment is simply to remove Item 3 and Item 4 from the original amendment.

Councilmember Whittum stated he will support the Formal Amendment to strike Item 3 and Item 4:

- He stated the quarter mile distance is actually the east most portion of Orchard Gardens and the area in question is actually about a half-mile walk from Orchard Gardens to Morris Park.
- The assessor's data shows that one of the homes on Murphy Park sold in the last year or two.
- It's not necessary to have all the homes on Murphy Park to improve the access to the northeast corner. One of the key problems with Murphy Park is there is a corridor between the NexCycle on Maude Avenue and Murphy Park and people take recyclables to NexCycle to get income and buy liquor at the liquor store and then they go back to Murphy Park. If Murphy Park were opened up a little more by demolishing one or two of the properties the City owns it would be a much more friendly and usable park and would be an excellent and appropriate investment in an area where density is on the rise.

VOTE on FORMAL AMENDMENT: 3-4 (Councilmember Swegles, Vice Mayor Moylan, Mayor Spitaleri, and Councilmember Howe dissented.)

Formal Amendment failed.

Councilmember Whittum offered a friendly amendment to add back Item 2 to the main motion to identify the Morse Avenue site as a high priority for development as a neighborhood park.

Councilmember Swegles stated the Director of Community Development didn't feel Item 2 needed to be there.

Director of Community Services Lewis clarified that to his knowledge the project is going forward and it has been identified and been approved in the budget, so adding back Item 2 is only adding additional support.

City Manager Gary Luebbers stated the City has money in the budget this year to begin development of that park. Identifying the Morris Avenue site as a high priority has come and gone and the City has gone to the next step. He reiterated Director Lewis' statement that Item 2 in the main motion would only be another statement of support.

Councilmember Swegles accepted the friendly amendment. Councilmember Howe accepted as the maker of the second.

Councilmember Chu clarified on Item 15 that what is now proposed on the fee schedule is that it goes up to 1.75 with effective date of the ordinance, and then the next fiscal year it goes up to 2.25, and then the following fiscal year it goes up to 3.0.

Vice Mayor Moylan stated it was a friendly amendment, except that that brought it up to 3.0 at the same time that the original one said 2.25.

Councilmember Chu responded actually it goes up to 3.0 at the time that it previously said 2.75.

Councilmember Howe clarified the effective date is when the application is complete by those deadlines.

Councilmember Whittum clarified 1.75, in Fiscal Year 2010 2.25, and then 3.0 in Fiscal Year 2011, and stated he will oppose that and believes they need to go to 3.0 now. He stated that is asking for development to pay as it goes and pay for its own impacts and believes there would be widespread public support for that.

Councilmember Hamilton stated they are talking of bringing more development into the City but are not putting a commensurate amount of park space in and the City needs to get it to 3.0 as soon as possible, something developers are doing in every other city around here. Councilmember Hamilton believes the citizens of Sunnyvale want more park space and the City should give it to them as soon as possible.

Councilmember Chu stated he would normally agree it should be brought up to 3.0 immediately, except for the fact we are in the deepest recession in 40 years and the City needs to be able to jump start development, so he agrees with the phased-in approach at this time to create incentives to get development sooner rather than later.

MAIN MOTION in summary: Approve staff's recommendation to approve Alternatives 1-16, with the following modifications:

- Item 3 and Item 4: Authorize the City Manager to sell the properties at a future time at the City Manager's discretion when the market improves; direct the City Manager to inform Council annually through the budget process the status of properties; the matter is required to come back before Council.
- Item 15: Direct staff to phase-in the standard increase as follows: 1.75 acres per 1,000 population as soon as practical; increase to 2.25 as of July 1, 2010; increase to 3.0 acres as of July 1, 2011; direct staff to use the standard that correlates to the standard in effect at the date of the completion of the application.

VOTE ON MAIN MOTION: 5-2 (Councilmembers Whittum and Hamilton dissented.)

4. **MOTION**                      **Consider Approval of an Amendment to Action Plans for Fiscal  
RTC 09-179                      Years 2004-08; Approval of Conditional Commitment of a \$1.3  
    Million Loan of HOME Funds for Rehabilitation of Aster Park; and  
    Approval of Budget Modification No.1**

Director of Community Development Hanson Hom presented the staff report.

Public comment opened at 8:32 p.m.

No public speakers.

Mayor Spitaleri called for the applicant to speak.

Director of Asset Management for Mid-Peninsula Housing Todd Marans introduced himself to the Council.

Councilmember Whittum stated when he visited the property he saw that the children's play set had caution tape around it and asked if there is a plan to maintain the play sets on the site.

Mr. Marans responded they would do that on an ongoing basis as part of their normal capital needs improvements.

Councilmember Whittum stated he saw a channel on the west side of property and said he thinks it could be interesting if that could be used as an amenity.

Mr. Marans responded he had received an email about that the day before. He was unaware of the channel, and it cannot be used at this time, but certainly they would entertain that and anything of that nature that benefits the residents and the community.

Public comment closed at 8:34 p.m.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded a motion to approve the Amendment to Fiscal Years 2004-08 Action Plans to reallocate \$1.3 million in HOME funds, conditionally commit \$1.3 million for the rehabilitation of Aster Park Apartments, and approve Budget Modification No. 1.

VOTE: 7-0.

5. **MOTION                      Approval of First Time Home Buyer Program Guidelines**  
**RTC 09-177**

Housing Officer Suzanne Ise presented the staff report.

Councilmember Swegles stated the City also supports the Housing Trust, which also has a first time homebuyers program, and verified this is in conjunction with that only geared towards Sunnyvale.

Councilmember Swegles asked how much funding there is for the Housing Trust that helps with their first time homebuyers program.

Housing Officer Ise responded the City offers several programs and the housing officers are in discussions with them regularly about coordinating the City's programs with theirs. Also the City will be processing the agreement for the funding that was approved as part of the recent budget approval for them, which was \$200,000 for this fiscal year. They intend to use some or all of that for their closing cost assistance program, which is \$6,500 that the buyers can use for closing costs or a portion of their down payment. Generally that is not enough to bridge the gap for the entire down payment, so it could be used in conjunction with the City's first time homebuyer loan. That \$6,500 assistance program is only available to Sunnyvale. The Housing Trust uses the City's funds to provide it in Sunnyvale and service those loans for anyone who requests them to purchase a home in Sunnyvale and the City will do outreach and publicity to let people know both of those programs are available.

Councilmember Swegles verified the programs could help people buy foreclosed homes and anything that is for sale as long as it has been inspected by the City's housing staff, passes the housing quality standards, and gets tested for lead based paint if it was built prior to 1978.

Councilmember Swegles questioned whether buyers have the home they want to buy picked out when they come in for the loan or they make sure they can secure the loan and then go look in the range they can afford.

Housing Officer Ise responded the guidelines provide for a pre-approval process so the buyers can be screened for eligibility first and get an eligibility letter. To get that letter they would have to come in with a pre-qualification letter for their first mortgage, so essentially they would have their financing package established when they make an offer on a home.

Councilmember Swegles asked if it would be possible for the City to offer prospective buyers a list of foreclosed homes instead of them having to do research to find them.

Housing Officer Ise responded they could provide them with links and resources. The City will also be doing outreach and encouraging real estate professionals to learn about the programs so they can publicize it to their clients and hopefully reach out to some lower income clients who might not otherwise be heavily marketed to.

Director of Community Development Hanson Hom mentioned that staff monitors foreclosure properties for housing and neighborhood preservation purposes and pointed out there are some excellent Web sites that they refer people to that provide an up to date listing of pre-foreclosure properties as well as foreclosure properties.

Councilmember Swelges verified the Web sites mentioned by Director Hom do not charge a fee.

Councilmember Howe stated the report says low income and 80% of area median, but it doesn't have a number and asked what that is approximately now and what is 120%?

Housing Officer Ise responded 80% for a household of four is just under \$85,000 per year. The moderate-income limit for a household of four is \$126,600 per year. For one person the moderate income limit is \$88,600. The low-income limit for one person is \$59,400 per year. There are also graduated limits for various household sizes. This information can be found on page 29 of Attachment A.

Councilmember Howe asked whether healthcare workers have been dropped from this program, or if they were they ever in this program, and now that the two programs are being merged where those healthcare workers are.

Housing Officer Ise responded in her research of old City documents on the HPPC program she did not see a specific mention of healthcare workers, however if they were public sector healthcare workers they would have been eligible for that program. She did see teachers, certified childcare teachers, and city employees and public sector employees mentioned. However, many healthcare workers would fall under the low- and moderate-income limits.

Councilmember Howe stated some years ago he made a motion and it passed that said healthcare workers would be included in one of the City's first time homebuyer programs, but stated he doesn't remember which one it was.

Housing Office Ise responded she did not find it in the staff reports or minutes for these two particular programs, but if it had been a motion she may have missed it and she could go back and look again.

Councilmember Howe stated it was to one of the two homebuyer programs, but not necessarily both, where teachers and that category of workers came in and requested it be included if it can be found.

Public comment opened at 8:46 p.m.

No speakers.

Public comment closed at 8:46 p.m.

MOTION: Councilmember Hamilton moved and Councilmember Howe seconded a motion to approve staff's recommendation to approve Alternatives 1 and 3: Approve the First Time Home Buyer Program Guidelines to incorporate the HOME requirements for HOME-funded loans, and to incorporate the HPCC Program, as set forth in the proposed Guidelines and authorize the housing officer to amend the outstanding HPCC loan agreements with the current HPCC borrowers.

VOTE: 7-0.

6. **ORDINANCE Award of Taxicab Franchise to ACME Yellow, LLC dba ACME Cab  
RTC 09-132**

Director of Public Safety Don Johnson presented the staff report.

Councilmember Chu verified ACME Cab this is an existing cab company that is being renewed and suggested an extension and have the expiree go for two years from whenever it happens.

Councilmember Hamilton asked if they vote on this item this evening does it go into effect immediately or is there a time lapse.

Director of Public Safety Johnson responded it comes for a second reading next Council meeting on July 28, 2009 and it becomes effective one month after that.

Public comment opened at 8:48 p.m.

No speakers.

Public comment closed at 8:48 p.m.

MOTION: Councilmember Howe moved to approve Alternative 1: Introduce and adopt an ordinance awarding a non-exclusive franchise for taxicab service to ACME Yellow LLC DBA ACME Cab for the period of August 28, 2009 through August 28, 2011 per applicant's request, and authorize the City Manager to execute necessary documents of agreement.

Councilmember Hamilton seconded the motion and verified the ordinance will be introduced and adopted as part of that.

City Clerk Kathleen Franco Simmons read the ordinance.

VOTE: 7-0.

7. **COUNCIL DISCUSSION**      **Review of Council Compensation**

Mayor Spitaleri stated that since all the employees of Sunnyvale have worked toward helping to bring the budget in line and deal with the structural issue, he would recommend his colleagues on a volunteer basis donate back next year's increase in compensation that will take effect January 1, 2010 and that he himself will do that.

Councilmember Chu requested the City Attorney explain why it has to be voluntary versus the Council voting on a specific action.

City Attorney David Kahn explained Council member's salaries are set by the City Charter to be increased every January 1<sup>st</sup> and changing that would require a Charter amendment. Council members cannot vote to not accept the compensation but can individually voluntarily return whatever portion of that increase they want to as a donation back to the City.

Councilmember Chu clarified the Mayor is suggesting Council members give back any increase starting January 1<sup>st</sup> when the charter provides for that increase.

Councilmember Chu commented a number of City Councils have been dealing with this problem, such as the City of Gilroy City Council that decided to vote on a mandatory basis to take a 10% reduction. Councilmember Chu stated he is voluntarily reducing his own salary by 5% immediately and encouraged the other Council members to do the same as a different option to what the Mayor is suggesting.

Vice Mayor Moylan stated he will take a voluntary zero year as many Sunnyvale employees have taken, but wanted to make the point that Charter-based increase includes a tax burden.

Councilmember Swegles asked for clarification on whether it has to be authorized every month or every pay period, or if it is authorized once is it good for a whole year.

City Manager Luebbbers responded since this is a voluntary action they will work through the Finance Director to have a form each Council member can sign authorizing a monthly deduction.

Public comment was opened at 8:56 p.m.

No speakers.

Public comment was closed at 8:56 p.m.

No action was taken.

### **COUNCILMEMBER REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE ASSIGNMENTS**

Councilmember Swegles requested the Political Action Ethics Committee be put on the July 28<sup>th</sup> meeting agenda.

Mayor Spitaleri approved the request.

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

- Council:
  - Councilmember Swegles stated that fellow Council member Otto Lee, who has been in Iraq, will be home soon and will be the speaker at the San Jose Rotary Club on July 22nd.
  - Councilmember Whittum proposed a study issue to enable permitting a medical marijuana dispensary in Sunnyvale stating that while it is a controversial measure, without some framework by the Council the policy issue is decided by default in favor of no permission, which presents a hardship on those with medical needs who must go to medical marijuana dispensaries in Oakland. Councilmember Hamilton and Mayor Spitaleri seconded the proposal.
  - Councilmember Hamilton pointed out a trophy and explained it is from a bowling tournament last week with the Council against Executive Leadership Team in which the ELT won. The Council will be hosting ELT members and their families at a barbeque.
- Staff
  - None.

### **INFORMATION ONLY REPORTS/ITEMS**

- Tentative Council Meeting Agenda Calendar
- Draft Minutes of the Parks and Recreation Commission Meeting of June 10, 2009
- Draft Minutes of the Parks and Recreation Commission Special Meeting of June 24, 2009
- Draft Minutes of the Housing and Human Services Commission Meeting of June 24, 2009
- Study Session Summary of June 2, 2009 – Local Agency Formation Commission (LAFCO) and Sunnyvale City Limits

**ADJOURNMENT**

Councilmember Hamilton adjourned the meeting in honor of Henry Kirkish, a longtime Sunnyvale resident who passed away June 29, 2009. Mayor Spitaleri asked for a moment of silence. Mayor Spitaleri adjourned the meeting at 9:02 p.m.

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Kathleen Franco Simmons  
City Clerk

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Date