

**APPROVED MINUTES\***  
**SUNNYVALE CITY COUNCIL**  
**TUESDAY, APRIL 27, 2010**

**CALL TO ORDER** - Mayor Hamilton called the meeting to order in the Council Chambers.

**SALUTE TO THE FLAG**

**ROLL CALL**

**PRESENT:**

Mayor Melinda Hamilton  
Vice Mayor Christopher Moylan  
Councilmember Otto Lee  
Councilmember Ron Swegles  
Councilmember Anthony (Tony) Spitaleri  
Councilmember David Whittum  
Councilmember Jim Griffith

**ABSENT:**

None

**STAFF PRESENT:**

City Manager Gary Luebbers  
Assistant City Manager Robert Walker  
City Attorney David Kahn  
Finance Manager Grace Leung  
Director of Community Development Hanson Hom  
Deputy Chief of Public Safety Mark Stivers  
Director of Public Works Marvin Rose  
Deputy City Clerk Lisa Natusch

**CLOSED SESSION REPORTS FOR APRIL 27, 2010**

*Closed Session pursuant to Government Code Section 54956.9(a) - Conference with Legal Counsel*

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

Vice Mayor Moylan reported Council received an update regarding the Town Center project and direction was given on existing litigation.

**SPECIAL ORDER OF THE DAY** – Recognition of Santa Clara University Women's Basketball Team

**SPECIAL ORDER OF THE DAY** – National Volunteer Week

## **PUBLIC ANNOUNCEMENTS**

Councilmember Lee announced the 3<sup>rd</sup> Annual Public Safety Open House.

Councilmember Lee invited participants to the 2010 Challenge Bicycle Ride.

Councilmember Lee announced the new Horizon 2035 advisory committee.

**PRESENTATION** – Communications Officer John Pilger and Deputy Communications Officer Adam Levermore gave a presentation on the new City of Sunnyvale Web Site

## **CONSENT CALENDAR**

Mayor Hamilton pulled Item 1.J from the Consent Calendar at staff's request, and announced that item would not be handled at this meeting.

MOTION: Vice Mayor Moylan moved and Councilmember Swegles seconded the motion to approve the revised Consent Calendar, which no longer includes Item 1.J.

VOTE: 7 - 0

- 1.A. Approval of Council Meeting Minutes of April 6, 2010
- 1.B. Approval of Information/Action Items – Council Directions to Staff

## **Fiscal Items**

- 1.C. MOTION                      List of Claims and Bills Approved for Payment by the City Manager – List  
    RTC 10-101                  Nos. 499, 500, 501

Staff Recommendation: Review the attached lists of bills.

- 1.D. MOTION                      Hamilton Water Plant, Project 825411, Budget Modification No. 29.  
    RTC 10-105

Staff Recommendation: Approve Budget Modification No. 29 in the amount of \$60,000 from the Water fund to Project 825411, and to increase the construction contingency by \$60,000 for the contract with Anderson Pacific Engineering Construction.

## **Personnel**

- 1.E. RESOLUTION              Adopt a Resolution to Include a Pre-tax Repayment Option for Employee  
    RTC 10-088                  Service Credit Purchases through the California Public Employees'  
   Retirement System (CalPERS)

Staff Recommendation: Adopt the resolution with CalPERS to offer employee service credit purchases on a pre-tax basis.

- 1.F. MOTION                      Approval of Contract for Third Party Workers' Compensation  
    RTC 10-093                  Administration Services

Staff Recommendation: Authorize a one-year extension of the contract with York Insurance Services Group, Inc. - California at no increase in cost.

**Contracts**

- 1.G. MOTION Award of Contract for Receiving Water Ammonia Characterization and  
RTC 10-107 Associated Laboratory Services (F0902-79)

Staff Recommendation: Award a contract in the amount of \$139,456, including applicable taxes, to Pacific EcoRisk, for receiving water ammonia characterization and associated laboratory services; and authorize the city manager to extend the contract for two additional years, provided services and pricing are acceptable to the City.

- 1.H. MOTION Approval to Award Contracts to Provide Recreational Classes and  
RTC 10-109 Camps (F0904-89)

Staff Recommendation: Award contracts to Kidz Love Soccer and Fun Tyme Sports Academy for a two year period and Skyhawks Sports Academy for a one year period, to provide recreational classes and camps; and authorize the city manager to extend the contracts for one additional one year period, provided services and pricing are acceptable to the City.

- 1.I. MOTION Reject Proposal Received In Response to Request for Proposals F0910-  
RTC 10-113 35 to Design and Install a Live Content Video Production System (F0910-  
35)

Staff Recommendation: Reject the proposal received in response to Request for Proposals F0910-35.

**Contracts: Sunnyvale Works!**

- 1.J. MOTION Award a Sunnyvale Works! Contract for Design and Construction  
RTC 10-115 Support Services for Citywide Sanitary Sewer Main Replacements 2010  
(F0904-93)

Staff Recommendation: Award a contract to West Yost Associates in an amount not to exceed \$134,761, for design and construction support services for the Citywide Sanitary Sewer Main Replacements 2010; and approve a project contingency in the amount of \$13,476.

This item was removed from the Consent Calendar and was not acted upon at this meeting.

- 1.K. MOTION Award a Sunnyvale Works! Contract for the Design and Construction  
RTC 10-114 Support Services for Citywide Sanitary Sewer Main Replacements 2011  
(F0904-92)

Staff Recommendation: Award a contract to Wreco in an amount not to exceed \$169,805, for design and construction support services (including optional CCTV video) for the Citywide Sanitary Sewer Main Replacements 2011; and approve a project contingency in the amount of \$16,980.

- 1.L. MOTION Award of Sunnyvale Works! Contract to Provide Traffic Engineering  
RTC 10-108 Services for the Mary Avenue Street Space Allocation Study (F0904-87)

Staff Recommendation: Award a contract to TJKM Traffic Consultants in an amount not to exceed \$139,880 to provide Traffic Engineering Services for the Mary Avenue Street Allocation Study; and approve a project contingency in the amount of \$13,988.

### **Other Items**

- 1.M. MOTION Consideration of Bordeaux Drive Street Space Allocation Study  
RTC 10-111

Recommendation: Staff and the Bicycle and Pedestrian Advisory Commission recommends Council direct staff to allocate street space on Bordeaux Drive between Moffett Park Drive and Java Drive in order to provide one travel lane in each direction, center two way left turn lane, bike lanes, no on-street parking.

### **STAFF RESPONSES TO PRIOR PUBLIC COMMENTS**

None.

### **PUBLIC COMMENTS**

Ray Crump suggested the Department of Public Safety prepare literature to prevent child injuries going to and coming from childcare facilities. Crump cited several instances where children were in potentially dangerous situations. Crump also expressed concern regarding the exit access at Walgreens on South Mary Avenue. Crump noted this has been an on-going problem and recommended a fine.

### **PUBLIC HEARINGS/GENERAL BUSINESS**

2. MOTION 2009-0874: Appeal by the applicant and an adjacent neighbor of a  
RTC 10-099 decision by the Planning Commission approving a Design Review to allow a 1,314 square foot addition to an existing 2,018 square foot home totaling 3,332 square feet with 54% Floor Area Ratio for a Site Located at 1560 Grackle Way

Planning Officer Trudi Ryan presented the staff report.

Councilmember Whittum confirmed with Planning Officer Ryan that the 3,332 square foot project does not include the approximately 270 square feet on page 4 of Attachment C marked "open to family room below." Planning Officer Ryan stated that under the City regulations adopted in late 2009, if the floor to ceiling distance is greater than 15 feet, an applied second floor is counted. Planning Officer Ryan added it would be an amount less than the 200 square feet because not all of the space is higher than the 15 foot threshold.

Councilmember Whittum stated that the floor area ratio (FAR) for the two stories on Grackle is in the range of 48-50 percent, and the FAR for this proposal is higher than all of the properties south of it. Planning Officer Ryan stated the area sometimes called the former Inverness School site was approved with a maximum of 50% floor area ratio, which was adopted in the late 1980s, therefore the property just to the south of the subject site

was not part of that subdivision and is not held to that 50% maximum. With some recent approvals they are now in the neighborhood of 50% but the other homes would be at 50% maximum. Councilmember Whittum stated that in terms of square footage this is the third largest floor area for the east side of Grackle and inquired if the square footages on the comparison properties included loft spaces. Planning Officer Ryan stated the numbers were obtained from the County Assessor and reflect whatever the County Assessor used for determining the square footage.

Councilmember Whittum inquired about staff's understanding of the status of the trees. Planning Officer Ryan stated the staff recommendation does not include any provisions concerning the tree and staff's understanding is that the neighbor to the north would prefer to have the tree to provide some filtered views between the two homes.

Councilmember Swegles confirmed with Planning Officer Ryan that as part of the appeal process the arguments presented in regard to the neighbor were provided to the Planning Commission.

Vice Mayor Moylan inquired if it is an option to grant both appeals by approving Alternatives 2 and 3. Planning Officer Ryan stated staff's understanding of the neighbor's appeal is to preserve as much sunlight as possible and the applicant does not want to make changes to the design, therefore she does not see how it would be possible to grant both appeals. Vice Mayor Moylan stated the first appellant is asking to be relieved of two of the conditions of approval and the other appellant is asking for another condition of approval to be added. Moylan asked if that is incompatible. Planning Officer Ryan stated it is possible from a decision-making perspective for Council to have different conditions of approval.

Public hearing opened at 7:46 p.m.

Shilpa Pathare, architect for the project, presented a PowerPoint presentation and videos of shadow studies of the property in December and February.

Ashwin Kadia, project applicant and one appellant, stated that he and the neighbor, Peter McCloskey, met with Project Sentinel for mediation and had come to an agreement that he would pay for a sun tunnel for the McCloskey's house; he and Mr. McCloskey had signed the agreement, but Mrs. McCloskey refused to sign. Kadia stated the design is per the City guidelines and he does not know what else they can do at this time. Kadia distributed a handout to Council regarding 840 Durshire Way and stated the property was identical to theirs before they remodeled, and the proposed design is identical 840 Durshire Way.

Councilmember Whittum referred to the floor plan on page 4 of Attachment C and confirmed that the family room on the first floor is new construction. Councilmember Whittum stated the master bedroom walk-in closet is located closer to the home to the north, yet there is new construction underneath where it says open to family room below. Councilmember Whittum stated that would have been a place where it could have been located without changing the square footage and would have blocked less sun. Councilmember Whittum inquired why they chose to locate the master walk-in closet in that area closer to the house to the north and block the sun. Pathare responded that they wanted to have a two-story volume in the family room; the room is deep and in order to get light into the large space they wanted to have clear story windows. Councilmember

Whittum stated they want light and so do their neighbors. Pathare stated A6.2, page 8 of Attachment C, shows how much the first story would have to be reduced in order to not shade the neighbor's window at all at any time of the year which would reduce the proposed second story by half. She stated that moving the closet from the north side to the south side would not make a difference.

Mr. Kadia stated it is a dining room window in question, not a kitchen window which is the second window in the room.

Vice Mayor Moylan confirmed with Pathare they are only appealing one condition of approval; they are not appealing the hipped roof vs. gable roof condition. Pathare stated they are more concerned with the 4 foot setback than the hipped vs. gable roof issue. Vice Mayor Moylan stated the proposed project is 3,300 square feet and 54% floor area ratio, and inquired what the revised square footage would be if the City's guideline of the recessed second story was met. Pathare stated if they had to make any revisions to the design they would move bedroom 4 forward, thereby keeping the same area.

Vice Mayor Moylan inquired whether the applicant has the freedom to move it out on the front or back if required. Planning Officer Ryan responded that if the appearance was similar there might be some opportunity to make the building a slightly different shape, but it was not staff's intent to consider that. Planning Officer Ryan stated it is only that bedroom which would be affected because the rear part of the home is the roof for the family room. She explained if the bedroom were four feet narrower because of the additional setback, it's possible moving it forward a couple of feet would not effect the overall appearance and design.

Mr. Kadia inquired why the setback is required when there are hundreds of homes in the neighborhood with straight walls on that side. Vice Mayor Moylan stated that is one of the things that citizens have complained about over the years with second story additions; it used to be that the second story setback was based on the property line, but a lot of people had the first story set back farther from the property line than required, and then if they met the second story setback they would have a long sheer wall and many people considered it very unattractive. Vice Mayor Moylan stated the requirement was redefined so that the second story setback is referenced to the first story wall, rather than the property line, and stated it is a fairly recent requirement.

Ms. Pathare referred to the elevation on A-5 and stated the two-story wall that comes up runs only about 15 feet of the length of the building and is broken up by the garage roof that goes up, so when it is looked at in 3-D it is not going to look like a sheer wall or straight wall going up two stories. She stated it is further set back and it is short length of the building.

Anne and Peter McCloskey, adjacent neighbors and the second appellant, came to the podium. Mrs. McCloskey stated she did not want to sign the agreement because it said if she signed she was in complete agreement with the house structure and she is not. McCloskey stated the kitchen window being discussed is the only window on that side of the house; there is another window above the kitchen sink but it is on the front porch, so there is no direct light. McCloskey stated in the middle of winter when there is only 8 hours of light, two hours of light is a lot of light and the applicants do not want to move it over because they are putting in a loft. McCloskey stated when she called Planning and was put on hold, the recording references energy efficiency, and those types of floor plans use

up a lot of energy. McCloskey added that she will now have to turn on more lights in her home because she is not going to have natural light, therefore they will both be using more energy. McCloskey expressed concerns about the process, stating a sign must be posted in the front stating the intent to remodel, and their sign was up for less than 24 hours because it was put out in the middle of a rain storm and fell apart. McCloskey stated it was never put it back up, yet the Planning Commissioners who said they drove by and looked at both properties never noticed it was not posted. McCloskey expressed concern about communication, stating a friend who replaced a fence had to get approval from every house that touched hers, but her neighbor had a huge structure approved without letting her know until she got a yellow piece of paper in the mail from the City. McCloskey said the yellow piece of paper stated to come to the Planning Commission meeting if they had a complaint. McCloskey stated she attended the meeting, and Planner Shaunn Mendrin told her afterwards that he wished she would have called him sooner and told him she had an issue with the lighting, even though she followed the directions on the card. McCloskey added she is not against her neighbors remodeling but she does not think it needs to block the light into her home. Mrs. McCloskey stated Kadia did to try to work out a compromise, but the only suggestions were that she could put a skylight or sun tube in her kitchen, and she does not feel she should have to remodel her home to accommodate their remodel.

Vice Mayor Moylan confirmed with Mrs. McCloskey that she is asking for less shading of the kitchen window than the current plans would provide. McCloskey clarified she does not want the trees removed because they will cover the mass they are building. Vice Mayor Moylan confirmed with Mr. McCloskey that 20-25% less shading than is what currently proposed would be acceptable.

Shilpa Pathare, architect for the project, stated she understands the McCloskeys want the shading reduced by 25% and they would have to figure out how many feet they would need to move back in order to do that.

Mr. Kadia stated that would impact the design of the house greatly. Kadia stated the window is currently half shaded and they are offering to remove the tree to give them more light. Kadia stated by adding the second floor, it will not cover the window or block the light; it is probably just shading it a little more than it is today.

Mayor Hamilton inquired as to how much shade in the solar study was due to the second story. Pathare stated she does not have an animation to compare it to the existing condition, but it is illustrated in the shadow analysis diagrams on A6.1, Attachment C, page 7 of 10. Pathare added the proposed design shows the entire window being completely shaded at noon on December 22.

Councilmember Whittum stated that in looking at Attachment C, page 4, he can see ways to maintain the square footage and reduce the shadowing. Councilmember Whittum stated the walk-in closet could be moved to the other side to introduce more sunlight and avoid the shadowing. Councilmember Whittum stated he does not see that they are trying to avoid the shadowing. Pathare stated when the design was started, the issue was primarily to get the design for the remodel, and the shadow issue came up much later after the design review hearing so they never had a chance to address it design-wise except through mediation and this process. Councilmember Whittum inquired if the application would benefit from an additional opportunity to look at reducing the shadowing, by not necessarily reducing the useable square footage, but laying it out in a different way.

Mr. Kadia stated it changes the design quite a bit from the outside; they have already spent a lot of money on the project, and making changes at this time would be very expensive. Kadia stated they have followed all the City guidelines completely; the shadowing guidelines defined by the City are for the roof coverage, not for window coverage. Kadia stated they have made sure they do not cover more than 10% of the roof; changing the design will require a complete redesign and cost analysis, which may make the project out of their reach. Ms. Pathare added that there would be cost implications for additional construction.

Mr. Kadia added a 20% increase in sunlight is a hypothetical number and he requests the Council and the McCloskeys view the three neighbor's homes who have houses covered by their neighbor's wall to see how much light they get.

Councilmember Griffith inquired if Kadia does not believe he can make minor changes to the existing design to accommodate the neighbors. Kadia stated it depends on the definition of minor. Kadia stated if it means moving the closet, it may sound minor but from the outside it is a big change. Councilmember Griffith inquired if Council wanted to accede to the neighbor's concern and reduce the shading by 25%, if there is no way to make changes to this design to accommodate that. Kadia stated they do not know what it would take to reduce the shading by 25%. Councilmember Griffith stated Council is being forced into an all or nothing decision.

Mrs. McCloskey added the shadow issue would not have been an issue had the Kadias mentioned what their plans were so they could express their concerns before they hired an architect and created the design. McCloskey stated she is ok with the Kadias having a regular window; it was the City who required opaque. Mrs. McCloskey added the trees filter the light, they do not block the light, and she does not want the trees removed.

Public hearing closed at 8:31 p.m.

Director Hom confirmed for Councilmember Spitaleri that staff reviews every project subject to existing zoning codes and guidelines for solar access. Director Hom stated some neighbors are more sensitive or concerned about privacy or solar blockage beyond what the City guidelines actually require, as in this case, and they City staff tries to work with both applicants to achieve a compromise that may exceed what the minimum guidelines call for. Director Hom stated that in this case they could not reach agreement between the two parties, even after referring them to Project Sentinel. Director Hom stated they encourage neighbors to talk to each other before an application is submitted, although it is not required.

Director Hom stated that the zoning code changed in the middle of the process, but because they came in with an application under the prior zoning code, they are subject to the prior zoning code.

MOTION: Vice Mayor Moylan moved and Councilmember Spitaleri seconded the motion to grant the applicant's appeal removing condition 3.A.1. under the condition that the shadowing of the next door neighbor's window caused by the current project as planned be reduced by 25%. In other words, this would have the effect of granting both appeals. Failing that, the Planning Commission decision would stand, thereby having the effect of denying both appeals.

Director Hom clarified with Vice Mayor Moylan that a 25% reduction in shading means the total amount of time the window is shaded, caused by the remodel, cut by 25%. Director Hom stated that during December the highest amount of shading is 4 hours, so a 25% reduction would require the shading to be kept to a maximum of 3 hours.

Vice Mayor Moylan stated this is a very large proposed remodel; it would be the second largest house in the neighborhood and have the largest FAR. Vice Mayor Moylan stated this situation is one of the consequences of Proposition 13; people used to buy small homes and move to a larger home as their needs grew. Since Proposition 13, it is not financially feasible to move and therefore the remodel business has increased. Houses laid out to be a certain size and distance from each other are now encroaching upon each other. Vice Mayor Moylan stated constraints are imposed to protect the neighborhoods, which is why there is a new rule that if a project is above 45% FAR, it has to go to the Planning Commission. Vice Mayor Moylan stated this project is going to change the neighborhood, and Planning Commissioner and a citizen both expressed concern at the Planning Commission meeting that they thought this home was too big and should be denied. Vice Mayor Moylan stated the issue of blocking light to the one window on the next door neighbor's house is a much more important issue than the effective mass on the opposite side of the house, so the four feet could be given back in exchange for shrinking the amount of shading. Vice Mayor Moylan stated it is not just about what the current people who live there today think, it is what the effect on the neighborhood going forward is. Vice Mayor Moylan stated he thinks the least Council can do is expect the applicant to meet Guideline 3.6.A to minimize blockage of sun access to living spaces, and the proposed remodel does not meet that condition.

Mayor Hamilton clarified with Vice Mayor Moylan that staff determines whether it will meet the shading criteria and if the owners choose not to try to meet that requirement, the Planning Commission decision stands.

Councilmember Griffith stated he supports the idea of allowing people to build two-story additions on their homes because moving is not a practical option due to the price of real estate. Councilmember Griffith stated although the applicant said they had met all the criteria, but the reality is that above 45% FAR, it requires Council approval. Councilmember Griffith stated a couple years ago then Councilmember Hamilton raised the idea of having tent pole approval for these types of projects, where anyone doing a remodel would be required to put up a PVC frame to show the proposed project. Councilmember Griffith stated he did talk to the neighbors, and all the two-story houses on Grackle for the most part have nothing on the third of the second story to the north, and as a result, there is virtually no shade of those windows. Councilmember Griffith stated it appeared to be a deliberate design decision on behalf of the people who did the remodel. Councilmember Griffith stated he spoke with one of the neighbors who stated they are not getting shade now but would have a big problem if the second story was moved over and shaded their window. Councilmember Griffith stated he supports the motion.

Councilmember Whittum stated the home is too big for the lot and offered an amendment to the motion that "failing that the application is denied." Councilmember Whittum stated there is 280 square feet spent on not a living space, but something that would give them more light at the expense of their neighbor getting less light. Councilmember Whittum stated he sympathizes with wanting additional square footage, but it does not make sense that there was not consideration of the neighbor in doing that because in looking at the layout it seems straightforward to reduce the shading and keep the square footage.

Councilmember Whittum stated he was not convinced about the discussion of economic feasibility because new first floor framing is being installed anyway. Councilmember Whittum added that the property is out of character for the neighborhood and offered an amendment that "failing that the application is denied."

Mayor Hamilton clarified with Councilmember Whittum that if the application is denied they design would have to be revised.

Vice Mayor Moylan stated he would be happy to modify the motion unless there are multiple objections.

Councilmember Spitaleri stated he thinks the applicant and neighbor can work with each other and come back with something they both can live with.

Councilmember Whittum added the amendment allows them to work it out and offers a much greater incentive to do so.

FORMAL AMENDMENT: Councilmember Whittum moved and Councilmember Swegles seconded the formal amendment to require that instead of "Failing that the Planning Commission decision would stand," the motion provides "Failing that the design review is denied."

Councilmember Spitaleri stated the Planning Commission had some other conditions , so if that doesn't work out, they may go back and look at one of the other conditions and say they can live with that one. He stated if they don't work it out, everything is gone, including the Planning Commission's recommendations for conditions of approval. He recommended the Council take into consideration the amount of time, money and effort on all parts by not allowing them to go back to the Planning Commission's recommendations for approval or to select one.

Vice Mayor Moylan stated the Council isn't dealing with the issue that was brought up at the Planning Commission, that the thing is just too big to begin with. He stated the amendment also fixes another problem and gives the applicant incentive to fix it.

VOTE ON FORMAL AMENDMENT: 5 - 2 (Mayor Hamilton and Councilmember Spitaleri dissented)

VOTE ON MAIN MOTION: 6 - 1 (Mayor Hamilton dissented)

3. MOTION                      Consent to Consider a Santa Clara Valley Water District Plan to Provide  
RTC 10-103                      Flood Detention at Braly School/Park

Director of Public Works Marvin Rose provided the staff report and introduced Bal Ganjoo, Senior Project Manager, Santa Clara Valley Water District (SCVWD).

Director of Public Works Marvin Rose confirmed for Mayor Hamilton that what is being asked by the SCVWD is whether or not the City Council is interested in considering this project at all.

Ganjoo presented a PowerPoint presentation.

Councilmember Griffith confirmed with Ganjoo the size of the detention area, that the fields are going to be replaced, and the approximate timeframe from start to finish for the project is 4-6 months. Councilmember Griffith confirmed with Ganjoo that if the area did flood, it would have to be cleaned. Councilmember Griffith stated there would be a slight loss of playable area. Ganjoo stated there are design details that could be worked out later with City staff and school staff. Councilmember Griffith stated he is not against the project, he just wanted to understand what the City is signing up for.

Councilmember Whittum confirmed with Ganjoo that the construction of the Sunnyvale East and West Channel Project is in the range of \$30 million plus. Councilmember Whittum confirmed that one of the benefits of having a detention basin is that it might be able to reduce any later use of eminent domain on residential property that might be needed if other means were used to hold back the water. Councilmember Whittum confirmed with Ganjoo that with detention basins it is possible than an improvement could include lighted turf playing fields.

Mayor Hamilton confirmed with Ganjoo that when the water goes into the detention basin it goes through a pipe.

Public hearing opened at 9:05 p.m.

No speakers.

Public hearing closed at 9:05 p.m.

MOTION: Councilmember Lee moved and Councilmember Whittum seconded the motion to consent to the concept of providing a storm-water detention area at Braly Park subject to the staff comments.

Councilmember Lee stated flooding is not a matter of if, but a matter of when, and planning ahead is a good idea and it is a win/win proposal.

Councilmember Swegles stated this is a win/win situation and thanked the water district for bringing it forward.

VOTE: 7 – 0

4. ORDINANCE      2009-0710: Water-Efficient Landscape Ordinance  
RTC 10-104

Director of Community Development Hansom Hom presented the staff report and a PowerPoint presentation.

Councilmember Griffith inquired as to how widely the Bay Area Water Supply Conservation Agency (BAWSCA) requirements have been accepted by cities in the bay area and to what extent they have gone their own way. Director Hom responded there are 25 water agencies in the bay area that participated in developing the model ordinance; cities are going through various stages of adopting the ordinance. Director Hom stated that in general, most cities covered by these water districts are looking to the BAWSCA ordinance as the starting point.

Public hearing opened at 9:14 p.m.

Dave Jones, resident, expressed concern that gardens and edible food may not be addressed by the ordinance which may discourage people from choosing landscaping that would feed families.

Public hearing closed at 9:18 p.m.

Councilmember Griffith stated Council received similar feedback from a concerned citizen and confirmed with Director Hom that agricultural uses, commercial nurseries, community gardens and private gardens are exempt from this ordinance.

Councilmember Swegles confirmed with Director Hom that water features are exempt from water conversation as far as land area devoted to landscaping.

MOTION: Councilmember Swegles moved and Councilmember Whittum seconded the motion to introduce an ordinance establishing new requirements for water-efficient landscapes.

Councilmember Swegles stated he spoke with BAWSCA today and they had great things to say about the work put into this ordinance and agreed with the modifications and suggestions from the City, and they were happy to see the changes that were proposed.

Vice Mayor Moylan suggested an amendment to change the applicability for single-family and duplex from 2,500 square feet or more to 1,000 square feet or more.

Councilmember Swegles inquired as to why staff made the recommendation. Director Hom responded that a number of issues were taken into consideration.

Councilmember Swegles accepted the amendment.

Mayor Hamilton confirmed with Director Hom that a new single family home with more than 1,000 square feet of renovated or new landscaping would be subject to the water efficient landscape ordinance provisions. Director Hom confirmed for Mayor Hamilton that this ordinance would only affect a brand new single family home.

Deputy City Clerk Lisa Natusch read the ordinance.

VOTE: 7 - 0

5. MOTION                    2009-0454: Work Plan for Lawrence Station Area Plan 2010-2011 (Study  
RTC 10-098                Issue)

Director of Community Development Hanson Hom presented the staff report.

Public hearing opened at 9:31 p.m.

Vu-Bang Nguyen, Land Use Program Coordinator for Urban Habitat, urged Council to support the study.

Public hearing closed at 9:33 p.m.

MOTION: Councilmember Lee moved and Vice Mayor Moylan seconded the motion to approve the proposed Work Plan for Lawrence Station Area Plan for Lawrence Station Area Plan, approve the proposed schedule for Lawrence Station Area Plan and direct the city manager to continue pursuing additional grant opportunities, as they become available.

Councilmember Lee stated he sees a huge potential for this area and he is happy to see the project moving forward.

Vice Mayor Moylan expressed appreciation for Planning Commission Brandon Sulser who first proposed this study issue.

VOTE: 7 - 0

6. COUNCIL            Consider Revisions to Council Policy 7.3.10 Regarding Selection of  
DISCUSSION        Mayor and Vice Mayor (Continued from April 6, 2010)

Mayor Hamilton introduced the item.

Councilmember Griffith stated he prepared the strikethrough version and he made one small change from what was presented in the previous meeting. In Section [4.D.] III.(b)., the reference to "If a Councilmember participates by teleconference..." was changed to "If any Councilmembers participate by teleconference..."

Councilmember Lee noted a small typo on the same section as it states "Councilmembers participates", and recommended deleting the "s" from "Councilmembers". Councilmember Griffith concurred.

Public hearing opened at 9:37 p.m.

No speakers.

Public hearing closed at 9:37 p.m.

Councilmember Spitaleri referred to page 4 of the Council Policy, under "All Councilmembers present" where it states "If one candidate receives four or more first-choice votes, that candidate shall be declared to be elected... If not, and one candidate has received the fewest first-choice votes, that candidate shall be eliminated, with his or her votes reassigned to the voters' second-choice candidates" and asked if that is the individual voting for the second choice. Mayor Hamilton responded in the affirmative and explained that if candidate B received the fewest votes and it was not a tie, the people who voted for candidate B would have their second choice votes reassigned to the remaining candidates. Mayor Hamilton provided the example that between candidates A through E, candidate B received two votes; candidates A and B voted for candidate B; if candidate A voted for candidate E as a second choice vote; candidate A's vote would be reassigned from B to E.

Councilmember Spitaleri expressed concern regarding a situation occurring if he does not want his vote as a second choice to go to the majority of the second choice votes. Vice Mayor Moylan clarified that if his first-choice candidate lost, his vote would still count, as his second-choice candidate would receive his vote instead.

Councilmember Spitaleri inquired as to the need for going through this type of process rather than a straight up and down vote on whoever receives the majority. Mayor Hamilton stated the current policy provides for ranked-choice voting, but it wasn't clear what would happen if a majority was not reached the first time. Vice Mayor Moylan stated every scenario was covered except in the eventuality of a 3-2-2 split, and this language would fix that.

Mayor Hamilton stated another option would be to state this is getting too complex and we should just go back to an up or down vote, and if a tie occurs, break the tie and move on.

Councilmember Swegles stated he assumes the only time the ranked-choice method would be used is when there are three or more candidates. He stated if a 3-2-2 tie occurs, the two 2s would have a runoff to see who gets eliminated. He stated in reference to Councilmember Spitaleri's comment, it seems to be a lot cleaner and simpler than going through and ranking second and third choices. He stated this way, you are voting for someone you want to see as the Mayor. Vice Mayor Moylan confirmed.

MOTION: Vice Mayor Moylan moved and Councilmember Griffith seconded the motion to approve Alternative 1: Adopt the changes listed under "Items for Clarification":

*Item 1: 4.D. Voting*

*Item 2: 4.D. (II)b Teleconferencing*

*Item 3: 4.D. (II)b and equivalent change to (III)b Teleconferencing*

*Item 4: 4.D. (III)a All Councilmembers Present*

*Item 5: 4.D. (III)a and equivalent change to (III)b All Councilmembers Present*

*Item 6: 4.D. (III)b Teleconferencing*

*Item 7: 4.D. (III)b Teleconferencing*

*Item 8: 4.E. Public Record for Written Ballots Cast*

*Item 9: 5 Nomination and Selection Process for Vice Mayor*

**with the addition of** Councilmember Griffith's recommended change to Section [4.D.]

III.(b) to "If any Councilmembers participate by teleconference..."

**and** make Councilmember Lee's correction of the typo.

Councilmember Whittum moved to amend the motion to strike Item 1: 4.D. Voting from the list regarding "No Councilmember shall refrain from voting".

Upon request for clarification of the process, Mayor Hamilton explained Alternative 1 would be handled as a consent calendar, and items could be pulled for separate consideration.

Councilmember Whittum confirmed he would like to pull Item 1: 4.D. Voting from the Alternative 1 list.

Mayor Hamilton confirmed Item 1: 4.D. would be handled on a separate motion and suggested after consideration of Alternative 1, each of the other alternatives should be considered.

Mayor Hamilton and Vice Mayor Moylan confirmed for Councilmember Swegles the motion is to approve Alternative 1, minus Item 1, and to include Councilmember Griffith's addition and Councilmember Lee's typo correction.

VOTE: 7 - 0

MOTION: Vice Mayor Moylan moved and Councilmember Swegles seconded to approve Item 1: Section 4.D. Voting that says "No Councilmember shall refrain from voting".

Vice Mayor Moylan spoke to his motion and stated in the document provided, there was a rationale for each one of the changes proposed, including this item. He stated per the information provided, everyone should have to vote.

Councilmember Whittum stated he doesn't object to the rationale; he thinks the body lacks the authority to force a member to vote. He stated if a member chooses to abstain, there is not a thing the body can do about it as it lacks force and has no effect. He stated if somebody wished to willfully abstain from the vote that is not misconduct; it is their vote and they can abstain. There is no sanction or disciplinary action that can be cast against a Councilmember for exercising their right to vote or abstain.

Councilmember Griffith stated he agrees with the principle and inquired of the city attorney as to the case of a Councilmember who needs to abstain such as in a hypothetical case of two Councilmembers where one works for the other and a conflict of interest may exist. He asked if an allowance should be made for the possibility of somebody having to abstain in the unusual case of a conflict of interest.

City Attorney David Kahn stated he would look at these guidelines for the usual situation. He indicated in a situation where there is a conflict of interest, it would have to be provided for specifically.

Councilmember Spitaleri confirmed with City Attorney Kahn these are guidelines and stated his concern regarding the constitutionality issue of forcing someone to vote if they don't want to vote.

City Attorney Kahn clarified these are policies, rather than guidelines. He explained policies are procedures the Council elects to establish for itself. He stated the Council has certain sanctions and remedies if there is a perceived violation of one of the Council policies. City Attorney Kahn stated with Roberts Rules of Order and other generally accepted practices, the expectation is that Councilmembers should vote on every matter that is before them unless there is a reason for not voting, such as a conflict or a need to recuse. He stated if a Councilmember was to abstain it wouldn't be a violation of the law, but it would be a violation of a policy if that policy was established by the Council.

Councilmember Spitaleri stated he understands supporting Council policy approved by Council. He inquired as to whether policy can be created that is in conflict with an individual's constitutional right to vote.

City Attorney Kahn stated he hasn't looked at the specific question of whether there is a distinction between voting for a motion that would be a standard agenda item in contrast to voting for an official on the body itself. Kahn stated his initial reaction would be the Council could set a policy that the entire Council should vote unless there is a good reason for not voting either on an agenda item or on a motion to appoint a member as mayor.

Councilmember Spitaleri explained if he votes for a colleague to be mayor it is a significant vote, because if it is felt that person is not doing the job correctly it requires quite a bit for the Council to remove the person from the office. He stated he doesn't have a problem with it, but he has a problem with it being looked at as violating a policy for a situation that he

thinks is very close to a constitutional right to vote for an elected person to hold office for two years under the charter.

Mayor Hamilton explained voting for the mayor and vice mayor is different from anything else the Council does and is the only time the Council votes on people, not issues. She stated a situation could arise where someone refusing to vote would cause a tie, with no way to break the tie. She stated it is the responsibility of all members of the Council to choose the mayor and the vice mayor.

Councilmember Spitaleri stated he does not disagree, but if the Council is going to carry that all the way through, it should be carried through with voting for people to serve on a commission. He stated when the Council votes for commissioners, all Councilmembers have a tendency of abstaining. He suggested if this motion is passed, it should be extended to apply to commissions.

Mayor Hamilton stated commissions are different because in the hierarchy, the Council holds power over the commissions. She stated she abstains on voting for people, not because they wouldn't be good for the commission, but because there might not be enough spots for them. She stated the Council has to vote on every person who applies for a commission; in this case the Council votes only on the two or three people who are nominated for mayor. She stated when you abstain on other items, it may be for conflict of interest reasons such as you own a house or you feel you can't be objective.

Vice Mayor Moylan stated it would be the City's policy that we all have to do our part to try to avoid ties. He provided the example of a member who doesn't like either of the people running, the person who they wanted to run wouldn't, so the member abstains and a 3-3 tie occurs. He stated it is the Council's job to vote. With regard to the point about commissions, Vice Mayor Moylan stated if it was taken all the way, it should be applied to the commissions too. He encouraged the Council to try to avoid having ties and immensely complicated elections. Moylan added with regard to commissions there is a difference between abstain and no as the mayor pointed out. Abstain means a person may be qualified for the commission but not the most qualified this time, and no means the person should not be applying for this. Vice Mayor Moylan stated the selection of the mayor is different as someone has to do the job, as opposed to a commission; the Council does not actually have to appoint someone to fill an opening.

Councilmember Spitaleri stated he always looks at policies and changes in policies when there has been a concern or a problem about the way things are done, but he doesn't remember how many times there was a tie for mayor.

Councilmember Swegles stated even if this is passed, there will be a worst case scenario if there are two candidates some don't agree with and vote no on both, resulting in a 3-3 tie with everyone voting. He asked what the Council should do in that case.

Vice Mayor Moylan stated in that case the member would be violating City policy, and as the city attorney mentioned, there is not that much leverage, but to recognize that whenever possible each Councilmember should pick one and vote for them.

Councilmember Swegles stated that if the situation is being forced where a Councilmember has to vote, a no is a vote.

Vice Mayor Moylan stated this requires a vote *for* someone.

Councilmember Swegles read the proposed language in 4.D: “No Councilmember shall refrain from voting during the selection of either the Mayor or Vice Mayor, or leave blank any of the choices if ranked-choice voting is used.” He stated that it does not say you have to vote *for* somebody.

Mayor Hamilton concurred and suggested the motion could be altered.

Councilmember Swegles stated this is forcing somebody to vote in a case where they don’t want to vote, or they don’t want to offend someone. He stated as much as he’d like to see everybody vote, this won’t cure the problem unless the wording is changed. Swegles stated even if the wording is changed, then it is forcing somebody to vote for somebody they don’t consider should be the mayor. He stated that doesn’t mean it would be a 3-3 tie; there could be one abstention or three abstentions.

Councilmember Griffith stated that is not the way the mayor’s vote works. He stated if there are two candidates, the votes are carried out, the vote is taken for the first candidate, then for the second candidate. He clarified that by requiring each member to vote, each member would have to vote for one of them. He stated there is not the option to vote no, as there is not a “no” vote. He stated if this passes, each member has to vote *for* one of the candidates. Griffith restated the proposed language: “No Councilmember shall refrain from voting” and stated you must vote.

Councilmember Swegles responded that “no” is a vote.

Councilmember Whittum urged the Council to vote against this motion for all the reasons previously stated.

Councilmember Lee stated he appreciated the discussion but did not catch the part until the very end when it was stated you *have* to vote yes on one of the candidates. He stated that if somebody really does not want to vote for any of the candidates, he can’t see this being required. He stated he will not be able to support this.

VOTE: 2 – 5 (Councilmembers Lee, Griffith, Spitaleri, Whittum, Swegles dissented)  
Motion failed.

MOTION: Vice Mayor Moylan moved and Councilmember Whittum seconded to approve Alternative 2, to retain the ranked-choice voting process for the case if three members are nominated.

Mayor Hamilton commented that Alternative 3 states if this option is chosen Item 5 becomes a moot point and should be eliminated. She stated she doesn’t think that is correct as Item 5 deals with study sessions. Vice Mayor Moylan clarified that Item 5 is part of Alternative 1.

Councilmember Griffith spoke in opposition to the motion and stated there seems to be a move to try to get to ranked-choice voting. He stated mathematically speaking, there is a lot of value in ranked-choice voting when there are a large number of voters, or a large number of things being voted for. He explained when there is a small number of voters and a small number of things being voted for, then anybody who has a little bit of knowledge about how some people are going to vote and a pretty good grasp of game theory has a significant

advantage over anybody else. He stated that should not be what the goal of this is which should be to end have a process that the voters or the people to whom the Council responds understand. Councilmember Griffith stated one of the problems in a three-way ranked-choice vote, is when somebody asks him: "How did this person become mayor?", he doesn't have a one-sentence answer. He stated a simple up and down vote to break a tie for second place would clearly provide a way to explain how a person won the vote, as opposed to the other situation where the person who got the most votes didn't actually win because of the way ranked-choice voting works. He stated this also makes him very concerned about number 12, because number 12 will result in a whole lot more ranked-choice voting.

Vice Mayor Moylan stated it is impossible for the person who gets the most votes to win. He provided the example where three candidates run, and each member has one first choice, second choice, and third choice. Under the current policy, if the person you like most doesn't win, your second-choice vote counts. Under the old way, you pick one person, and if they don't win, you don't get any say over which of other two win. He stated you get more choice with ranked-choice voting. Vice Mayor Moylan stated that the idea that an applied mathematician on the council with knowledge of game theory would somehow be able to game the system is incredibly unlikely. He stated this would be very rarely used, but when used, it would lead to a better consensus choice. He encouraged support for keeping this in place especially since it hasn't been tried yet.

Councilmember Lee stated he likes ranked-choice voting which he learned in college at Berkeley as it was being used for electing student senate. He stated unfortunately, the process is not easy to explain, as demonstrated by the mayor earlier; it was not very clear. Councilmember Lee stated the same problem will be had with voters, and voting for mayor is a very important process for the public to be able to understand. He stated this probably is not one of the best processes to use as it is complicated, and people understand up and down voting. He stated ranked-choice voting could save a lot of money to avoid run-off elections, but in this situation it might be more trouble than it is worth.

Councilmember Whittum stated he is in favor of the motion and pointed out that it is not a bad thing for voters to learn about ranked-choice voting, as many are not familiar with it. He provided information on where people can learn more about ranked-choice on the Internet, and stated the county and hopefully the City will use ranked-choice for elections.

Councilmember Swegles stated he can't support ranked-choice for these small numbers.

Mayor Hamilton stated she believes ranked-choice has a place but not here. She stated the Council doesn't even use it for study issues unless there are ten or more that are being ranked. She stated candidates are not being ranked for mayor; Council is trying to pick one mayor and one vice mayor. Mayor Hamilton stated she agrees with Councilmember Swegles, with the numbers, there is not a critical mass to make ranked-choice really valuable. She stated it is far easier to go back to a simple up or down vote and for that reason she can't support the motion.

Councilmember Whittum requested a point of information on how the simple up or down vote will work with multiple candidates.

Mayor Hamilton provided an example of candidate A gets three votes, candidate B gets two votes, candidate C gets two votes; all seven vote on B and C, with one to receive three and

the other to receive four votes; if candidate C gets four, then it's candidate A versus candidate C.

Councilmember Whittum stated he is still in favor of ranked-choice but thanked the mayor for explaining it.

Mayor Hamilton called for the vote.

VOTE: 2 – 5 (Councilmembers Lee, Griffith, Mayor Hamilton, Councilmembers Spitaleri and Swegles dissented)  
Motion failed.

MOTION: Councilmember Griffith moved and Councilmember Swegles seconded the motion to approve Alternative 3, to eliminate the ranked-choice voting process.

Councilmember Griffith spoke to his motion and stated he supports instant runoff-voting when there is a representative sample, but seven is not a representative sample. He stated he supports the easier method and the nice thing about the easier method is that unless somebody abstains, you eventually have seven people voting on the mayor and they clearly win with the majority. He stated that for the people they represent, that is the best outcome.

Mayor Hamilton stated she originally voted for ranked-choice voting before she actually saw it in action. She stated now that she has been through the mayoral process twice with it, she thinks that it is not going to work the way she thought it would.

Councilmember Whittum read the statement in Alternative 3: "If this option is chosen Item 5 becomes a moot point and should be eliminated" and requested clarification of what Item 5 means.

Mayor Hamilton stated Item 5 is listed in Alternative 1, 4.D.(III)(a) and equivalent change to 4.D.(III)(b) All Councilmembers Present.

Councilmember Whittum confirmed with the Mayor that Item 5 will be moot if this motion passes. He stated that this motion says to eliminate the ranked-choice process but doesn't say to replace it. Councilmember Whittum confirmed the motion means to eliminate and go back to the older process.

Mayor Hamilton responded Item 10 states: "Eliminate Ranked Choice Voting and Return to the Former Method of Up or Down Voting for Mayor and Vice Mayor."

Vice Mayor Moylan added that all the sections that say "If there are two candidates..." would say "If there is more than one...".

Mayor Hamilton called for the vote.

VOTE: 5 – 2 (Vice Mayor Moylan and Councilmember Whittum dissented)

Mayor Hamilton opened the floor for a motion on either Alternative 4 or 5, to create a policy to either hold a study session to allow Councilmembers to discuss the positions.

Councilmember Griffith expressed concern regarding the holding of a study session before

January in order for people to talk about who wants to be mayor and why they want to do it. He stated in an election year, that would create the situation where a candidate for mayor and vice mayor doesn't have a position to speak at the table in the study session. Mayor Hamilton responded the study session would be after the election. Councilmember Griffith stated he recently went through this, where he was involved in study sessions specifically the one with intergovernmental relations where he didn't have standing to do as much as everybody else at the table. He stated it concerns him that a newly-elected person wouldn't have equivalent standing in one of those study sessions.

Mayor Hamilton inquired of the City Attorney if it would be possible to allow Council-elect to do that, since they don't technically have all the rights and responsibilities of a sworn elected official yet.

City Attorney Kahn responded until they are seated at the dais or sworn-in as Councilmembers, other than being subject to the Brown Act, there are no responsibilities and powers they would have between the election and when they are seated. He stated in terms of whether they could be seated at the table at the study session, to be consistent with past practice, the answer would be no, until they were formally seated as a Councilmember.

Vice Mayor Moylan stated what is listed is a study session that any citizen can attend and any citizen could speak. The purpose would be to allow people interested in the job to speak. Vice Mayor Moylan stated he would favor dealing with this concern by saying "Councilmembers or Councilmembers-Elect".

MOTION: Councilmember Whittum moved and Vice Mayor Moylan seconded the motion to approve Alternative 4 to create a policy to hold a study session to allow Councilmembers and Councilmembers-Elect to indicate a preference for the positions and discuss aspects of the positions.

Councilmember Whittum spoke to the motion and stated this gives people a chance to publicly sit around the table and let their colleagues know what their interests are.

Councilmember Griffith stated the difference between a study session and doing something from the dais is significant in that a study session is not televised. People can come, but they don't come as often. Councilmember Griffith stated he is concerned this is creating an environment where people can say things in public but not really in public. He stated he has had some perception of how uncomfortable it may be to campaign to be mayor or vice mayor from the dais, but doing it from the dais serves a greater public good than doing it in a study session. He stated for that reason he would oppose the motion.

Mayor Hamilton confirmed with Councilmember Griffith that by saying "campaigning from the dais" he was referring to the speeches that people can give at the meeting where everybody is nominated.

Vice Mayor Moylan stated that is not what is really going to happen. He stated this is intended to fix the current situation where all those conversations that would occur in the study session occur in private meetings and people get concerned about possible violations of the Brown Act. He stated the goal of this is so that everyone can put their cards on the table and not have to worry about violating the Brown Act.

Mayor Hamilton stated she is not going to support the motion, partly because you don't know who is nominated until the night the nominations occur. She stated it is possible someone might decide they are interested after the study session and their only avenue of expressing their interest has been cut off maybe as a result of something that person heard at the study session. She stated she thinks people might feel uncomfortable and that it doesn't really solve the problem. She stated she can live with the possibility of each Council deciding for itself what it wants to do.

Councilmember Spitaleri stated he agrees with Councilmember Moylan as the whole point is to be in the room if someone is interested in being nominated for mayor. He stated no one is going to get nominated that night, but it allows you to express an opinion that you want to be mayor and why you want to be mayor. He stated the problem is that those who are interested in being mayor felt restricted on how many people they can talk to even though they weren't asking for a vote or commitment. Councilmember Spitaleri stated his feeling is that if he goes up to every Councilmember and says why he wants to be mayor, he doesn't want to be given an answer, but he is concerned he would be violating the Brown Act. He stated if all could discuss it in an open meeting, it wouldn't violate the Brown Act. He stated he felt this would be a better way.

Vice Mayor Moylan stated it should be pointed out that for the person who makes a late decision, they're in the position that everyone is right now. They can have private conversations with two people as long as those people don't talk to anyone else. This just provides an additional option that eliminates a lot of worry for people.

Councilmember Lee confirmed with the city attorney regarding the procedure for Brown Act. Lee stated currently the Brown Act says council members cannot talk to more than the majority, or four people, before the vote takes place. He stated the study session would allow all seven to speak to each other, however, after the study session the Brown Act still applies until the time of actual voting and you can only talk to two other people. Councilmember Lee stated he sees that the point is to allow a forum for the seven to have an open dialogue of this process. He stated after the forum, the Brown Act wall would be re-erected. He expressed concern about how to handle discussions between two people or two other people after the seven have already discussed the matter in the study session.

City Attorney Kahn stated during the study session, it is an open session and it would be an opportunity for whoever is interested to speak to all six of his or her colleagues without violation of the Brown Act. He stated Councilmember Lee correctly pointed out the Brown Act would apply both before and after the study session and explained the Brown Act says a member can't talk to more than a quorum to try to reach a consensus or to garner support prior to a public meeting. He stated in the example of the individual who spoke with two individuals before the meeting then spoke to one more after the meeting that would be a continuation of that same conversation.

Councilmember Lee stated he does not agree that this would avoid people having the ability to talk to two other people, but he thinks it might help avoid violating the Brown Act. He stated he would support the motion.

Councilmember Swegles stated when he, Mayor Hamilton and Vice Mayor Moylan were trying to put together all the rules and regulations on selection of the Mayor and Vice Mayor they brought in Dianne McKenna to discuss how they avoided violating the Brown Act in the past. He stated it appears it was not always done and it was often pre-determined by the

time of the council meeting as to who was going to be mayor. Councilmember Swegles stated that was one of the things this group wanted to do was to make sure candidates for mayor would only talk to two other people. He stated if they were turned down by one of the two, they were out of luck. Councilmember Swegles stated the group realized the policy didn't work, and they want to make sure it is fair for everybody. He stated the only way to do that is to make sure that everybody hears every reason of why a person wants to become mayor. He stated this proposal will hopefully cover that situation.

Mayor Hamilton called the question.

VOTE: 5 – 2 (Councilmember Griffith and Mayor Hamilton dissented)

Mayor Hamilton opened the floor for discussion of Item 12.

Vice Mayor Moylan stated Item 12 is now moot as it was only applicable if ranked-choice voting remained a possibility. He stated with the passage of Item 3, to eliminate ranked-choice voting, number 6 was killed and 7 becomes unnecessary as it is consistent with the city attorney's current interpretation of the policy.

Councilmember Griffith recommended policy section 4.B. be changed to be: "...one successful nomination..." because the interpretation could be such that a member nominates someone, that person refuses, and that is the member's one nomination. Councilmember Griffith stated he wanted to make sure that the wording allows for one successful nomination, not one nomination.

Mayor Hamilton stated that a nomination might not have been made if it was turned down.

City Attorney David Kahn stated the language is already ambiguous but if the issue came up, a nomination of one person could be made, the idea being that the candidate will accept and run. He stated if a nomination is made and the person declined, he would interpret that the member would have the ability to nominate a second person until someone accepted the nomination. He stated if the Council wants to make that explicit in the policy, it may.

Councilmember Griffith stated he is in agreement if everybody is in agreement with the way it is.

Mayor Hamilton stated she doesn't assume the point is moot. She stated she agrees with the city attorney's interpretation of the policy, but there could still be a situation where somebody might want to nominate more than one colleague even without ranked-choice voting.

Councilmember Griffith reiterated the current interpretation from the city attorney is a member is allowed one nomination.

Councilmember Spitaleri stated it was determined by the city attorney as an interpretation or opinion. He questioned whether there is a rule, law or charter provision that prohibits a member from nominating more than one person.

City Attorney Kahn clarified that it was not just his interpretation; it was the language the Council adopted when this policy was passed. The language as it currently reads states that a member may nominate *someone*, which is generally one person, rather than multiple

individuals. He stated the Council could change the policy to specifically allow more than one person. He stated the language in the current policy is clear, more than a matter of interpretation, and limits to one nomination.

Councilmember Spitaleri confirmed with the city attorney that the Council policy could be changed.

Councilmember Griffith stated the city attorney's current interpretation is as it stands, and we would be in violation if a person chose to nominate two people.

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

Councilmember Griffith reported that he attended a Valley Transportation Authority Policy Advisory Committee meeting in which future extensions to the light rail system were discussed, which impacts Sunnyvale directly if it goes through. Councilmember Griffith stated they are looking at two extensions to run light rail from the future BART extension to the Montague light rail station possibly all the way to Mountain View.

Councilmember Griffith reported the Recycling and Waste Reduction Commission is having a Zero Litter Summit on May 10.

Councilmember Spitaleri reported he was unable to attend his Intergovernmental Committee Assignment on the League of California Cities Employee Relations Committee due to an unexpected conflict, but he will be receiving their information on various legislation the League will support or oppose.

Councilmember Swegles reported he spent two days on Capitol Hill with CEOs of Silicon Valley. Councilmember Swegles stated one of the main concerns they were promoting is affordable housing. Councilmember Swegles stated he learned about AB744, which would allow passes to be sold to individuals to use high occupancy lanes.

Councilmember Swegles announced that 1.1 million signatures were obtained on the Local Taxpayer, Public Safety and Transportation Protection Act measure and it will be on ballot.

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

Councilmember Whittum suggested a budget issue for the next budget cycle to consider restoring the Eco Pass for City employees, an approximately \$36,000 budget item. Councilmember Whittum suggested a study issue regarding planning guidelines to facilitate harmonious expansion of child care facilities and stated he provided a copy of the write up to staff. Councilmember Whittum requested a study session regarding high speed rail alternatives analysis. City Manager Gary Luebbers stated a study session has been scheduled for June 15.

Councilmember Swegles announced he, Councilmember Whittum, former Mayor Jack Walker, and Don Eagleston, the new CEO of the Chamber of Commerce will represent Sunnyvale in a bocce ball tournament. Councilmember Swegles announced the Rotary Club of Sunnyvale is having an upcoming golf tournament.

Mayor Hamilton announced there will be a Council information table at the upcoming Health & Safety Fair at the Columbia Neighborhood Center, and invited Council to staff the table.

**INFORMATION ONLY REPORTS/ITEMS**

- Tentative Council Meeting Agenda Calendar
- Draft Minutes of the Board of Library Trustees Meeting of April 5, 2010
- Draft Minutes of the Housing and Human Services Commission Meeting of March 24, 2010
- RTC 10-110 Status Report Evaluating Human Relations and Cultural Diversity Advisory Committee (Information Only)
- RTC 10-112 Opportunity for Council to Appeal Decisions of the Planning Commission of April 12, 2010 and the Administrative Hearing of April 14, 2010

**ADJOURNMENT**

Mayor Hamilton adjourned the meeting at 10:44 p.m.

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Kathleen Franco Simmons  
City Clerk

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Date