

APPROVED MINUTES*
SUNNYVALE CITY COUNCIL
TUESDAY, JUNE 29, 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
Director of Finance Mary Bradley
Finance Manager Grace Leung
Director of Community Development Hanson Hom
Chief of Public Safety Don Johnson
Director of Public Works Marvin Rose
City Clerk Kathleen Franco Simmons

SPECIAL ORDER OF THE DAY – Proclamation Recognizing July as Parks and Recreation Month

CLOSED SESSION REPORTS FOR JUNE 29, 2010

Closed Session pursuant to Government Code Section 54957.6 - Conference with Labor Negotiator

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

PUBLIC ANNOUNCEMENTS

Mayor Hamilton announced the 2010 State of the City award winners and invited the community to the State of the City event on July 4 at Washington Park.

Mayor Hamilton announced the first meeting for the Horizon 2035 Committee and the Climate Action Plan Community Workshop.

CONSENT CALENDAR

Members of the public requested to pull Items 1.G, 1.H, 1.L, and 1.M from the Consent Calendar.

Vice Mayor Moylan moved and Councilmember Lee seconded the motion to approve the Consent Calendar, with the exception of Items 1.G, 1.H, 1.L, and 1.M.

VOTE: 7 - 0

- 1.A. Approval of Draft Council Meeting Minutes of May 25, 2010
- 1.B. Approval of Draft Council Meeting Minutes of June 15, 2010
- 1.C. 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 10-169 Nos. 509 and 510

Staff Recommendation: Review the attached lists of bills.

- 1.E. MOTION Appropriation of \$50,577 of Emergency Management Preparedness Grant
RTC 10-170 Funds and Approval of Budget Modification No. 42

Staff Recommendation: Alternative 1: Approve Budget Modification No.42 to appropriate EMPG Funds in the amount of \$50,577.

Personnel

- 1.F. MOTION Adoption of 457 Deferred Compensation Plan Wrap Around Document;
RTC 10-168 Adoption of ICMA Model Plan

Staff Recommendation: Alternative #1; Adopt a “Wrap Around Document” for the City’s 457 deferred compensation plan, including the loan provision, using the ICMA model plan document.

- 1.G. MOTION Amendment to Agreement for Services between the City of Sunnyvale
RTC 10-181 and the City Manager

Public hearing opened at 7:12 p.m.

Tap Merrick, spoke regarding items 1.G and 1.H, questioned whether the City can afford to give the city manager and the city attorney these benefits when the City is talking about potential cuts to employee salaries and/or benefits.

Councilmember Griffith, referencing item 1.G., stated the buy-out benefit option is available to all City employees with the city manager approval; in this case City Council must approve for the city manager.

Mayor Hamilton further clarified the city manager was to be given certain benefits upon his hire while in the city attorney’s case he’s been here five years and is due the next higher vacation accrual rate.

Public hearing closed at 7:14 p.m.

Councilmember Swegles moved and Councilmember Lee seconded the motion to approve Alternative 1: Authorize the Mayor to execute the amendment to the City Manager agreement.

VOTE: 7 - 0

- 1.H. MOTION Amendment to Agreement for Services between the City of Sunnyvale
RTC 10-179 and the City Attorney

Public hearing opened at 7:14 p.m.

No speakers.

Public hearing closed at 7:14 p.m.

Councilmember Lee moved and Councilmember Swegles seconded the motion to approve Alternative 1: Authorize the Mayor to execute the amendment to the City Attorney agreement.

VOTE: 7 - 0

Contracts

- 1.I. MOTION Award of Bid No. F0904-94 for Asphaltic Materials for Department of Public
RTC 10-167 Works Pavement Operations

Staff Recommendation: Award a one-year contract for asphaltic materials on an "as needed" basis to Reed and Graham, Inc., of San Jose.

- 1.J. MOTION Award of Contract for the Maintenance of the City's Radio Communication
RTC 10-175 Systems (F0905-107)

Staff Recommendation: Award a contract in the amount of \$151,442, excluding taxes, to Motorola, Inc. for maintenance of the City's radio communications systems.

- 1.K. MOTION Award of Contract to Provide Ruggedized Notebook Computers for
RTC 10-176 Department of Public Safety Patrol Cars (F0905-101)

Staff Recommendation: Award a contract to Artemis Technology LLC. in an amount not to exceed \$236,876, to furnish ruggedized notebook computers for the Department of Public Safety patrol cars.

- 1.L. MOTION Authorization to Amend an Existing Contract for a Phase II Environmental
RTC 10-177 Evaluation at Morse Park (F0906-110)

Public hearing opened at 7:19 p.m.

Adam Berkan, Chairman of the Morse Park Neighborhood Association, expressed appreciation for the City's work at the Morse Park site, considering the environmental issues.

Robert Biro, Vice President of the Morse Park Neighborhood Association, agreed with Berkan's remarks and expressed appreciation to City Council and staff for their prompt response to a question he asked a couple of weeks ago.

Public Hearing closed at 7:20 p.m.

Councilmember Griffith moved and Councilmember Swegles seconded the motion to amend an existing contract with Erler & Kalinowski, Inc. (EKI) for additional environmental services in an amount not to exceed \$83,000; and approve an additional project contingency in the amount of \$16,600.

Councilmember Griffith spoke to his motion and stated he attended the same Morse Park outreach meeting and he thought city staff did an excellent job briefing the residents on Morse Park.

VOTE: 7 - 0

- 1.M. MOTION Amendment of Outside Counsel Agreement for Mary Avenue Extension
RTC 10-165 Appeal

Public hearing opened at 7:21 p.m.

Tammy Salans encouraged Council not to litigate this matter any more and put the \$100,000 to better use elsewhere.

Public hearing closed at 7:22 p.m.

Councilmember Griffith moved and Vice Mayor Moylan seconded the motion to approve a First Amendment to the Outside Counsel Services Agreement with Barg, Coffin, Lewis & Trapp for legal services in an amount not to exceed a total contract amount of \$300,000.

Councilmember Griffith stated he was not on Council and was not involved in any prior meetings regarding the original Mary Avenue overpass issue.

Councilmember Whittum stated he will be opposing the motion.

VOTE: 6 - 1 (Councilmember Whittum dissented)

- 1.N. MOTION Amendment of Outside Counsel Agreement with Bertrand, Fox & Elliot
RTC 10-172 for Litigation Advice and Services

Staff Recommendation: Approve a Third Amendment to the Outside Counsel Services Agreement with Bertrand, Fox & Elliot for legal services in an additional amount not to exceed a total contract amount of \$450,000, and extending the term to 2013.

- 1.O. MOTION Amendment of Outside Counsel Agreement with Rankin, Landsness,
RTC 10-173 Lahde, Serverian & Stock for Litigation Advice and Services

Staff Recommendation: Approve a First Amendment to the Outside Counsel Services Agreement with Rankin, Landsness, Lahde, Serverian & Stock for legal services in a total contract amount not to exceed \$250,000.

Contracts: Sunnyvale Works!

- 1.P. MOTION Award of Sunnyvale Works! Bid No. F0905-96 for Accessibility
RTC 10-178 Improvements Ramps II - 2010

Staff Recommendation Award a contract in the amount of \$227,090 to Nor-Cal Concrete for the subject project, and authorize the city manager to execute the contract when all necessary conditions have been met; and approve a construction contingency in the amount of \$55,952.

STAFF RESPONSES TO PRIOR PUBLIC COMMENTS

None.

PUBLIC COMMENTS

Harriet Rowe stated June 28 was her last Planning Commission meeting and thanked the Councilmembers that had previously served on the Planning Commission for helping her acclimate to her duties with their expertise. Rowe thanked Council and the citizens of Sunnyvale for their support.

Tap Merrick welcomed back Councilmember Swegles.

PUBLIC HEARINGS/GENERAL BUSINESS

2. RESOLUTION Resolution Declaring Raynor Activity Center Available for Long Term
RTC 10-164 Lease Pursuant to Government Code §54222, *et seq.*

Public Works Director Marvin Rose presented the staff report.

Mayor Hamilton clarified the reason it is being offered for a long term lease is because there is a substantial amount of renovation necessary on the buildings.

Director Rose concurred and stated it was the subject of Council's review in 2008 in which they gave staff direction to look at a long term lease that had the potential of completely renovating the site by a private operator and being revenue neutral for the City.

Mayor Hamilton inquired as to the dollar amount of the required renovations. Director Rose stated it depends on what the operator wants to do with the site, but he would guess it would be in the \$5 million to \$10 million range. Director Rose stated the City has put very little long term money into the property at Council's direction; the City is only doing things to maintain the existing tenants. Director Rose confirmed for Mayor Hamilton it is not viable in the long term and we have no capital projects for further improvements to the site, therefore if it was left in its current state, as equipment and buildings fail it would not be able to continue to be leased.

Mayor Hamilton clarified the issue on the agenda is not who the City would lease to; it is a necessary step in a process Council must go through.

Public hearing opened at 7:34 p.m.

Ikko Fushiki, owner, My Dream Academy, provided written materials to Council and spoke regarding surplus furniture stored at Raynor Activity Center by the City and encouraged Council to declare the furniture surplus property.

Maria Fushiki, owner, My Dream Academy, stated she would like to keep My Dream Academy at Raynor Activity Center, expressed concern about the \$100,000 annual maintenance and stated My Dream Academy maintains buildings 1, 4 and 5.

Mary Klenk, parent of a child at My Dream Academy, expressed concern regarding moving to a month to month lease from a long term lease as it puts parents in an awkward position to find other child care should My Dream Academy close.

Councilmember Swegles reiterated the City is not looking at long term leases this evening.

Mayor Hamilton reiterated the item is making the property available for government uses.

Councilmember Griffith clarified that Alternative 1 would be the required legal step before granting a long term lease to anyone.

City Attorney Kahn confirmed for Councilmember Griffith this is a procedural requirement and a first step before the City can offer the property for a long term lease.

Todd Gumbrecht, parent of children at My Dream Academy, inquired as to why it would cost \$10 million to renovate the property and why it costs \$100,000 per year to maintain the buildings.

Mayor Hamilton stated she will ask staff to address the questions after the public hearing.

Heidi Hideko Yanagi, parent of child at My Dream Academy, stated in this country education is cut first and Council salaries are cut last and inquired if maintenance of the building can be done for less.

Bin Liu, parent of child at My Dream Academy, spoke in support of My Dream Academy.

Tap Merrick urged that whatever arrangement is found with My Dream Academy is timed with the school year to give the families opportunity to find replacement schools in the fall. Merrick stated asbestos and earthquake retrofitting can be expensive, in the range of \$3 million to \$12 million.

Juergen Mueller, president, Sunnyside Gymnastics Club, spoke regarding the benefits of the club and urged Council to consider Alternative 2 and encouraged Council to find a solution for the tenants.

Ian Prickett inquired as to what has happened between two years ago and now such that we are now looking at a procedural step to declare it surplus property.

Mayor Hamilton clarified the direction to staff was to find a revenue neutral solution that would involve renovating the buildings. Mayor Hamilton stated her understanding of the situation is that staff and the tenants were not able to come to an agreement that was acceptable to both sides.

Mr. Prickett stated he recommends Alternative 2. Prickett inquired if an existing tenant was to take out a lease, would this procedure have to be completed. Mayor Hamilton stated the Council direction is to do a long term lease that is revenue neutral, and long term in this case is probably 15 years. Hamilton stated because of the length of the lease the City is required to complete this step. Mayor Hamilton stated the City has not come to an agreement with the tenants.

Eugene Garcia stated there was no process for communications with the City and stated My Dream Academy is beneficial to the neighborhood.

Flo Oy Wong, tenant, Raynor Activity Center, stated she is disappointed she had to learn about the issue in the Sunnyvale Sun and San Jose Mercury News and feels staff was remiss in not notifying the tenants. Wong urged Council to consider all factors and the soul of the City.

Elise Burrows, tenant, Raynor Activity Center, stated it is business savvy to preserve Raynor Activity Center.

Public hearing closed at 8:03 p.m.

Mayor Hamilton inquired as to the breakdown of the approximately \$5 million to \$10 million estimate for renovations.

Director Rose stated the facilities have reached the end of their useful life and to continue to lease them they would have to be renovated. Rose stated the estimate in 2008 was \$5 million to \$10 million. Rose stated the way to determine it is to offer it for lease and see what people are willing to pay for renovations and long term lease; therefore, that would come in the next step.

Director Rose confirmed for Mayor Hamilton HVAC, plumbing, asbestos removal, structural seismic improvements to meet current codes would be included in the costs.

Director Rose confirmed that the City is using approximately one-third of the facility for City storage because the plumbing and HVAC have failed in those buildings and it was not worth fixing, therefore they cannot be leased. Rose stated square footage has been lost over the years due to those types of things. Rose stated the reference to \$100,000 per year spent on roofing, plumbing, HVAC and general emergency maintenance is to keep the facility operating. Rose stated the facility is beyond the end of its useful life.

Director Rose stated Council's motion was to determine the viability of a long term lease option that would be revenue neutral and could include the current lessees and others as well. Rose stated there is a lot of interest in the site, including private schools. Rose stated the renovation number is based on approximately \$250 per square foot.

Mayor Hamilton inquired if notification was sent to the building tenants.

Director Rose confirmed for Mayor Hamilton that the building tenants were notified about this meeting but the Art Studios were inadvertently missed in the noticing process and Department of Community Services' staff attempted to make contact with them today and were successful with two.

Councilmember Spitaleri inquired about the interest from private schools in leasing the property and inquired if there was any conversation with the current lessees.

Director Rose stated there was no conversation with anyone regarding a long term lease because we had to go through this process first. Rose stated staff did meet with the current tenants when their leases were going to expire but they were not interested in a month to month lease as they wanted a longer term lease. Rose stated by State law we could not move to a long term lease until we had an opportunity to go through this process.

Councilmember Spitaleri inquired when direction from Council was to seek someone interested in long term leases with the possibility of improving the property, we couldn't do that without going through this process.

Director Rose confirmed we did not have that information in 2008.

City Attorney Kahn confirmed for Councilmember Spitaleri that the statute requires that before property can be either sold or available for long term lease, an offer has to be made to affordable housing, school districts and parks and recreation districts. City Attorney Kahn stated the law was in effect in 2008, and as soon as legal staff realized that was the intention, the Department of Public Works was advised of the appropriate procedure to proceed with the long term lease.

Councilmember Griffith inquired if Alternative 1 is approved and bids are received, Council will have the freedom at that point to say a private school gave the best offer therefore we are going to take it or the current owners did not give the best offer but we think it is the best use of the land.

City Attorney Kahn confirmed that when the property is available for long term lease and there is an RFP put out, one of the terms of the RFP may be a description of how the use will benefit the community and is a factor Council can take into account. Kahn stated Council would not be required to take the highest bidder based on the bid alone.

City Attorney Kahn confirmed for Vice Mayor Moylan there is no restriction that should the facility be opened up for lease, that there be just one tenant.

Mayor Hamilton inquired if there is a breakdown of costs in writing, or if that would be the staff report from 2008. Director Rose stated there is no item by item estimate; the number was based on square footage at \$250 per square foot.

MOTION: Vice Mayor Moylan moved and Councilmember Swegles seconded the motion to approve Alternative 1: Approve a resolution declaring Raynor Activity Center available for long term lease pursuant to Government Code §54222, *et seq.*

Vice Mayor Moylan stated the alternative two years ago was to sell the site because the property was past its useful life, and Council was persuaded to do what we could to try to preserve it. Moylan stated this is a step in an attempt to try to preserve it. Moylan stated this is good news because the alternative was to sell the site.

MOTION to TABLE: Councilmember Whittum moved to table the issue because adequate notice hasn't been given to the tenants; some questions have come up, and we need more time for public input.

Motion died for lack of a second.

Councilmember Spitaleri stated he is concerned about the timeline for the process and its effect on the day care facility.

City Manager Luebbers stated it will be a long process; we have to give 6-month notice to the agencies that have first right and develop a request for proposals.

City Attorney Kahn clarified for Councilmember Spitaleri affordable housing agencies, school districts or parks and recreation districts have the right to express an interest in entering into negotiations with the City for the property, but the City is not obligated to end up in a lease with one of those agencies.

Councilmember Swegles inquired if we would need to add a stipulation that after we go through the process, when it is finalized, we work with current tenants to have adequate time to complete a school year or art projects.

City Manager Luebbers stated staff would commit to an ongoing line of communication with the tenants and advise them throughout the process as to the timing.

Councilmember Lee inquired if given the amount of interest and the number of long term tenants, asked the maker of the motion to accept a friendly amendment to make sure we are providing exceptional hand-holding and notification to tenants to help them understand the timeline so they have some certainty as to next steps, and what the opening and closing time would be if this motion were to pass.

City Manager Luebbers staff would make a commitment to keep them involved throughout the process.

Director Rose stated whether or not there is interest from those government agencies at the end of 60 days, staff will be back to Council to discuss schedule and the RFP.

Councilmember Griffith inquired if we are legally precluded from entering into long term agreements until we go through this process, what is the definition of long term.

City Attorney Kahn stated generally any lease longer than 5 years is considered to be a long term lease that would trigger this requirement.

Councilmember Griffith inquired if Council would have the option of entering into 6-month leases with the current tenants until this can be resolved, to give them a better sense of security. City Attorney Kahn stated Council would have that option.

FRIENDLY AMENDMENT: Councilmember Griffith moved a friendly amendment to look into slightly longer term leases that do not limit the City's option while this process is going forward.

Vice Mayor Moylan accepted the friendly amendment.

Mayor Hamilton asked for Councilmember Griffith's definition of slightly longer term.

Councilmember Griffith stated he would leave the definition to staff's discretion.

Vice Mayor Moylan stated the implication would be the leases would be as long as possible without limiting our options.

Councilmember Swegles stated he accepts the friendly amendment.

Councilmember Whittum inquired as to why this option was not pursued in the intervening two years. Director Rose stated it was pursued in the range of six months to one year but the only proposal received back from the tenants was for five years or longer, and that was not acceptable. Director Rose stated he would be happy to go back to see if the existing tenants are interested in some short term length.

VOTE: 6 - 1 (Councilmember Whittum dissented)

City Manager Luebbers confirmed for Councilmember Lee that staff will keep Council apprised of any lease agreements via the City Manager's Bi-Weekly Report.

3. ORDINANCE 2010-7279 Consideration of an Urgency Interim Ordinance to Extend the
RTC 10-163 Temporary Moratorium Affecting the Sale and Distribution of Marijuana
for Medical Purposes

Community Development Director Hanson Hom presented the staff report.

Councilmember Swegles inquired if the State initiative were to pass, how it would affect the City's study.

Director Hom stated staff would need to explore the implications.

Councilmember Whittum stated he would like to hear from the public as to whether there is reasonable access to dispensaries and what the threat to the public health, safety and welfare would be.

Mayor Hamilton reminded speakers to keep their comments to the topic of the moratorium.

Public hearing opened at 8:27 p.m.

Alesha Boyd, Sunnyvale Cooperative Association, stated the association supports the moratorium and the extension. Boyd spoke regarding the Attorney General guidelines and stated they do not support on-site growing for security reasons.

Lauren Vazquez, patient, attorney, and director of the Silicon Valley Chapter of Americans for Safe Access, stated she supports extending the moratorium until December 15. Vazquez addressed possible restrictions in requirements and requested patients to be included in the conversation. Vazquez recommended looking at the City of Mountain View staff report.

Batzi Kuburorvich, director, MediLeaf, stated several medical cannabis patients will die in a 10.5 month period. Kuburorvich stated he opposes the 10 month extension due to the lack of progress in the last month and requested Council reconsider using MediLeaf as a beta

test over the next six months while the ordinance is being written.

Vice Mayor Moylan confirmed that Mr. Kuburorvich received the return of his check.

Paul Stewart stated he has forwarded several sample ordinances and recommended Council consider a continuation of the moratorium for 90 days to reach out to other cities and use the initial applicant as a beta test. Stewart stated the statewide initiative will have virtually no impact on medicinal cannabis; it deals with personal use and with taxing cannabis sales.

Brian David, Executive Director of the Shoreline Wellness Collective, recommended extending the moratorium for six months or less. David stated he is prepared to submit an application for a business license.

Matt Lucero, owner, Buddy's Cannabis, requested Council act quickly to put an ordinance in place. Lucero stated fifty cities in California have ordinances and invited Council to visit his facility before it shuts down.

Essmat Kaid, owner of a collective in San Jose, invited staff to visit his facility and stated a 45-day extension is enough.

Robert Jones, on behalf of Valley Sky Alternatives, stated there is an excellent opportunity for Sunnyvale to serve as a model of how to appropriately regulate this type of business. Jones stated there is an opportunity for Sunnyvale to draft the best ordinance. Jones stated the patients have been to many facilities in the area and they are willing to share what they have seen works best. Jones stated they would like to see appropriate zoning, dependable testing for molds and pathogens, accurate nutritional and dosage information and fair tax assessments on purchases. Jones stated there is an opportunity for the City and residents to benefit financially by following tax models already in place in other cities throughout the state.

Dorji Roberts, attorney, works with Robert Jones and his collective of patients, stated he does not believe it has to take 10.5 months.

Mayor Hamilton stated she met with Dorji Roberts and Robert Jones yesterday and passed their information on the city manager.

Public hearing closed at 8:46 p.m.

Councilmember Lee inquired about the timing on the work plan; if Council were to extend the moratorium through December 2010, would staff still be able to comply.

City Manager Luebbers stated the schedule anticipates compliance; if anything out of the ordinary occurs, there is sufficient time to complete it within the moratorium period. Luebbers stated staff fully intends to have this completed in December 2010 as the work plan anticipates, and it may be sooner.

Councilmember Lee stated he hopes it will be sooner and inquired if it cannot be finished by December, can it be extended by Council for up to a year.

City Attorney Kahn stated the law on moratoriums provides for the 45 day initial urgency moratorium and then there is a maximum of two extensions allowed; the first extension can

be up to 10 months and 15 days, the second extension up to one year. Kahn stated the disadvantage would be that if the initial extension was for less than 10 months and 15 days, the additional time could not be recovered.

City Attorney Kahn confirmed for Vice Mayor Moylan that whenever an ordinance comes to Council, if Council chooses to enact it, the moratorium automatically ends.

Vice Mayor Moylan indicated it might be better to err on the side of making the moratorium longer, as the extra time just goes away if you don't need it, rather than making the moratorium too short and running the risk of a court case that requires the ordinance to be redone.

City Attorney Kahn confirmed for Vice Mayor Moylan that if there was a change in state law that required additional time and the moratorium was to expire, the moratorium would not go past whatever the expiration date would be; action would have to be taken fairly quickly in accord with the State law.

Vice Mayor Moylan stated it is the time it takes to craft an ordinance that works for Sunnyvale rather than what the length of the moratorium is. Moylan confirmed it is staff's recommendation to make the moratorium as long as legally permissible and then pushing on the ordinance aspect.

City Manager Luebbers referred to the work plan and stated there is a process involved including outreach to the public; it is not just the time necessary to craft the ordinance.

City Manager Luebbers confirmed for Vice Mayor Moylan stated people have provided ordinances, but we need to be sure the ordinance crafted fits our City.

Councilmember Whittum inquired about the work plan in Attachment A.

Director Hom stated items 1 and 2 are done, and the next step is item 3, public outreach, and considerable outreach to the community is expected, as well as meetings with the proponents of medical marijuana collectives. Hom stated the key item for preparation of an ordinance is the joint study session with Council and the Planning Commission in which a number of options will be outlined and will give staff sufficient direction to prepare the ordinance.

Councilmember Whittum inquired as to why the public outreach will not be held in July.

Director Hom stated staff will start meeting informally with a number of groups in July to discuss the sample ordinances that have been forwarded, and meet with other cities to understand what options they are considering.

Councilmember Whittum requested staff comment regarding a beta site mentioned by a member of the public.

Director Hom stated the idea to legally allow one interim marijuana collective in Sunnyvale as a test case to monitor operational and safety issues. Hom stated staff feels there are enough examples of legal and illegal marijuana collectives nearby that provide adequate beta tests to explore and there is not a need for a beta test in Sunnyvale.

Councilmember Whittum stated one of the buildings at which he works has a dispensary around the corner and people he has asked did not know it was there. Whittum stated a beta test site would be helpful for people to see what is going on; he thinks most people's concerns are that it not be located near their home or school. Whittum expressed concern about how we will convey during public outreach what a well-zoned dispensary would look like when we do not have any examples in Sunnyvale.

City Manager Luebbers stated there are many examples in surrounding cities.

Councilmember Spitaleri expressed concern that this not continue on and on. Spitaleri stated there is plenty of information on ordinances in the 13 states that have legalized marijuana. Spitaleri inquired as to why we that information can't be used to craft a model ordinance and asked how we will do public outreach if we do not know what is in the ordinance yet.

Director Hom stated there are a number of examples of how other communities have dealt with this, and where the variation occurs is under what circumstances they are allowed. Hom stated there are complex legal issues involved and different thoughts and frames of mind on the proper way to regulate the issues. Hom stated it means taking the information and dissecting it into something that is manageable. Hom stated staff proposes to bring Council the various issues and the options to deal with, and based on that direction, craft a proposed sample ordinance for consideration.

Mayor Hamilton stated a 4/5 vote, or 6 of 7, is required to extend the moratorium.

Director Hom confirmed for Mayor Hamilton that if the moratorium is not extended it goes back to the status quo before the moratorium was enacted, which is staff's interpretation that the current zoning code does not permit marijuana dispensaries in the City because it is not a defined use in the zoning code.

Mayor Hamilton inquired if the study issue would continue to be pursued at that point.

Director Hom confirmed for Mayor Hamilton it would be up to Council to determine if they would like to continue to pursue the study issue outside of the moratorium being in place.

Mayor Hamilton stated if current zoning does not allow them, the moratorium in some ways is redundant, but there may be a legal difference that if someone did open, it would be a different legal battle if there was a moratorium in place.

Director Hom stated staff's original proposal for a moratorium was to make it very clear that during the study period medical marijuana dispensaries or collective are not an allowed use in the City.

Councilmember Griffith inquired if an extension is not passed tonight, would the City become more liable for legal action than it is currently.

City Attorney Kahn stated the City would not necessarily become more liable for legal action; the current code does not allow medical marijuana dispensaries as a permitted land use. Kahn stated a moratorium makes clear that the issue will be studied and that during the study period it is not a permitted use. If one was to be established during the moratorium period, the legal action would be clearer and more enforceable than if it were under the land

use code; although staff thinks it would also be enforceable under the land use code.

MOTION: Councilmember Swegles moved and Vice Mayor Moylan seconded the motion to approve Alternative 1: Introduce an ordinance to extend the Urgency Interim Zoning Ordinance for an additional 10 months and 15 days, using Attachment A as a guideline.

Councilmember Swegles stated we want to do this as expeditiously as possible but we also want to be sure we get residents' input into Council's decision.

FRIENDLY AMENDMENT: Councilmember Lee proposed moving the completion date from May 24, 2011 to January 31, 2011 to shorten time by approximately 4 months. Councilmember Lee stated if staff is able follow the schedule in Attachment A, it would make no difference.

Councilmember Swegles stated that is one of the reasons he put Attachment A in the motion, so that staff has it as a guideline. Swegles stated if the State bill passes, we are going to have something completely different and we want to look at all aspects which is why he would like staff to have the extra time.

Mayor Hamilton announced the friendly amendment was declined.

Vice Mayor Moylan stated the length of moratorium will not determine when this gets done. Moylan added it was stated by every public speaker that we should have a moratorium extension; there was just a debate as to how long it should be. Moylan stated the limiting factor is not going to be how long that is, it is when staff can get the work done. Moylan stated the remaining time would be taken from our public outreach and that is one thing we do not do. Moylan stated we do not want to do something as controversial as this in such a manner that any citizens feel they did not get a chance to provide input. Vice Mayor Moylan stated the motion is the right thing to do.

Councilmember Whittum stated the time pressure is for the people who need this. Whittum stated the real question is whether we are providing access.

FORMAL AMENDMENT: Councilmember Whittum moved that 10 months and 15 days be replaced in the motion with December 15.
Formal Amendment died for lack of a second.

Councilmember Whittum stated he would appreciate hearing from anyone why they think there is access now and how there is a threat to the public health. Councilmember Whittum stated he cannot make the findings in the ordinance.

Councilmember Griffith stated he likes the work plan in Attachment A. Griffith stated it is very important to him that it comes back to Council in the December timeframe but shortening the length of the extension ties the City's hands. Councilmember Griffith stated he takes staff at its word and supports the longer extension.

Mayor Hamilton stated she is glad to hear some of the dispensaries are urging passage of the moratorium. Mayor Hamilton stated she takes staff at their word to do everything they can to get this done by December.

City Clerk Kathleen Franco Simmons read the ordinance title.

VOTE: 5 - 2 (Councilmembers Lee and Whittum dissented)
Motion failed.

Councilmember Lee confirmed with City Attorney Kahn that a 4/5 vote is necessary to pass the ordinance.

MOTION: Councilmember Lee moved and Councilmember Whittum seconded the motion to introduce an ordinance to extend the Urgency Interim Zoning Ordinance until January 31, 2011, using Attachment A as a guideline.

Councilmember Lee stated 10 months and 15 days is what the law allows, but staff has clearly shown that they can get this done sometime in December, and if they can it will be a non-issue; if it cannot be done by January he would like to hear about it.

FRIENDLY AMENDMENT: Councilmember Swegles proposed moving it back to March 1, 2011 to give staff more leeway, due to the proposition on the ballot.

Councilmember Lee stated he would change the motion to February 28, 2011.
Councilmember Whittum declined to accept the amendment.

AMENDED MOTION: Councilmember Lee amended the motion to introduce an ordinance to extend the Urgency Interim Zoning Ordinance until February 28, 2011, using Attachment A as a guideline.

Councilmember Whittum requested clarification whether the vote is on the amendment.

Mayor Hamilton stated it was accepted as a friendly amendment; he modified his own motion.

Councilmember Lee confirmed he accepted the amendment as a friendly amendment.

City Attorney Kahn confirmed for Councilmember Lee that according to the Standard Code of Parliamentary Procedure by Alice Sturgis, when a motion is seconded it puts the motion on the floor; it can be amended without the second necessarily agreeing to that amendment.

VOTE: 3 - 4 (Councilmembers Griffith, Vice Mayor Moylan, Mayor Hamilton and Councilmember Whittum dissented)
Motion failed.

MOTION: Councilmember Griffith moved and Vice Mayor Moylan seconded the motion to approve Alternative 1: Introduce an ordinance to extend the Urgency Interim Zoning Ordinance for an additional 10 months and 14 days.

Councilmember Griffith stated he is confident staff will do exactly what they have said they will do and he sees no reason to artificially tie the City's hands for no apparent reason.

Councilmember Spitaleri stated he is not sure why Council is afraid to have a deadline to get this done and he feels there is plenty of information available to develop a proposed ordinance. Spitaleri stated he feels there is a good possibility there will be another

extension. Spitaleri stated he does not doubt that staff can do the work but he does not see a reason for not having a deadline.

Vice Mayor Moylan stated the deadline is in the work plan outlined in the attachment; the only thing we're arguing about is how much extra slack the City has if an unexpected outside thing happens. Moylan stated the end of the moratorium is a secondary deadline. Moylan stated a couple of years ago Council passed a motion on an issue that many citizens felt was premature and unfortunately one of the quotes was "I don't need to hear from the public on this, I already have my mind made up." Moylan stated this is an issue we really need to hear from the public on and if we say we have all the information we need, we are saying we have our minds made up. Moylan stated we have told staff to do this as fast as they can without compromising the public input.

City Manager Luebbers stated staff has a deadline of December 30; the reason for the extension is to protect the City in case of any unforeseen circumstances. City Manager Luebbers stated he commits to have it back to Council by the end of December.

Mayor Hamilton stated she would like to extend it as long as possible to do it once so we do not have to ask for another extension.

City Manager Luebbers stated Council will be involved and aware of what is going on throughout the process.

Councilmember Whittum stated a tight timeline is a vote of confidence in the staff and having an additional year to tack on is a safety valve if something does happen. Councilmember Whittum stated he would favor a shorter timeline knowing we can add an additional year if we encounter problems.

Councilmember Lee confirmed with Director Hom that if the ordinance does not pass tonight, the moratorium ends July 9.

VOTE: 5 - 2 (Councilmembers Lee and Whittum dissented)
Motion failed.

MOTION: Councilmember Swegles moved and Councilmember Lee seconded the motion to introduce an ordinance to extend the Urgency Interim Zoning Ordinance to March 31, 2010.

VOTE: 6 - 1 (Councilmember Whittum dissented)

Councilmember Swegles announced he would not be able to stay for the rest of the meeting and thanked his colleagues and the citizens of Sunnyvale for their support.

Mayor Hamilton called a recess at 9:34 p.m.

The meeting reconvened at 9:46 p.m. with all present except Councilmember Swegles.

4. RESOLUTION Adoption of the FY 2010/2011 Budget, Fee Schedule, and Appropriations
RTC 10-171 Limit

Budget Officer Drew Corbett presented the staff report.

Councilmember Spitaleri thanked staff for answers to his questions regarding fees and inquired as to the logic behind some of the fee increases. Spitaleri inquired if there is a cost difference in doing the same service, such as inspecting a 20-unit apartment complex versus a 50-unit complex, as it is the same person doing the 20-unit apartment who is doing the 50-unit apartment.

Chief Johnson stated the smaller apartment complexes take two people 15 minutes to inspect including travel time and data entry, and bigger complexes may require more people.

Vice Mayor Moylan confirmed with City Manager Luebbers that Planning Commission training has been included in the budget.

Councilmember Spitaleri inquired about the proposed number of public safety officers to be reclassified.

Chief Johnson confirmed for Councilmember Spitaleri the number of public safety officers goes down over time through attrition by 15, and an increase by ten civilian professionals.

Councilmember Spitaleri confirmed that the number of public safety staff who can respond to 911 calls in emergencies is being reduced by 15.

City Manager clarified that none are people off the street such as patrol or fire.

Chief Johnson confirmed for Councilmember Spitaleri that the public safety officers currently in those positions can respond to 911 calls.

Councilmember Spitaleri inquired if one of the positions that would be civilianized is the front desk officer who takes crime reports.

Chief Johnson responded not necessarily; they would be working closely with PSOA and with SEA to determine the greatest benefit to the department and citizens.

MOTION: Vice Mayor Moylan moved and Councilmember Griffith seconded the motion to approve Alternative 1: Approve the resolutions to adopt the FY 2010/2011 Recommended Budget, Fee Schedule, and Appropriations Limit.

Councilmember Griffith expressed appreciation to staff for coming up with solutions to meet the goals laid out by Council. He expressed concerns regarding the tenuous situation the City is in with the margin of error provided by the budget stabilization fund and the fact that it will be drawn down to \$8 million at the end of six or seven years, which is roughly the operating expense for the City for one month. He stated with no margin of error, a hard look needs to be taken at the way money is spent, revenues are raised, or at the ways we fail to raise revenue.

Councilmember Lee stated this is one of the most difficult budgets given the economic situation and commended staff for the hard work to find savings and make the twenty-year budgeting doable.

Mayor Hamilton expressed appreciation to staff and echoed comments from colleagues to

continue the tradition of fiscal responsibility.

VOTE: 6 - 0 (Councilmember Swegles absent)

City Manager Luebbers expressed appreciation to Council for the vote of confidence and to staff for the great job they did.

5. ORDINANCE Award of Taxicab Franchise to A-1 American Cab Company
RTC 10-166

Chief of Public Safety Don Johnson presented the staff report.

Public hearing opened at 10:06 p.m.

No speakers.

Public hearing closed at 10:06 p.m.

MOTION: Vice Mayor Moylan moved and Councilmember Lee seconded the motion to approve Alternative 1: Introduce and adopt an ordinance awarding a non-exclusive franchise for taxicab service to A-1 American Cab Company for the period of August 6, 2010 through August 5, 2012 per applicant's request, and authorize the city manager to execute necessary documents of agreement.

City Clerk Kathleen Franco Simmons read the ordinance title.

VOTE: 6 - 0 (Councilmember Swegles absent)

COUNCILMEMBER REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE ASSIGNMENTS

Councilmember Spitaleri reported he attended the League of California Cities Employee Relations Committee meeting which mostly dealt with the new health care act.

Mayor Hamilton reported she and Director of Finance Mary Bradley attended the League of Revenue and Taxation Committee meeting and topics of conversation included November ballot propositions. Hamilton stated the marijuana proposition was a topic of lively discussion.

NON-AGENDA ITEMS & COMMENTS

Councilmember Griffith reported Proposition 22, which prohibits the state from taking funds used for transportation or local government projects and services. Griffith stated Council will consider positions on ballot measures on October 5, but due to the overwhelming interest in Proposition 22 requested it be considered earlier. Mayor Hamilton stated she is considering it.

Councilmember Spitaleri reported he attended the recent Relay for Life.

Councilmember Spitaleri provided comment regarding the change in how the Quarterly Report will be provided to senior citizens with the recent change from direct mail to online or availability in the City Hall lobby. Spitaleri inquired if there has been any feedback from the community.

City Manager Luebbers reported one person has sent a comment through the Answer Point.

Councilmember Spitaleri stated he is interested in feedback.

Mayor Hamilton stated she has received feedback and inquired if an e-mail could be sent to the online utility billing payment database to be able to opt-in to get notification of the quarterly report online, and offer the hard copy as a subscription.

City Manager Luebbbers confirmed that staff will look into it.

Councilmember Spitaleri inquired if the Murphy Street lighting is timed to be shut off at night.

Director Rose responded it is on timers; staff is still working through glitches.

INFORMATION ONLY REPORTS/ITEMS

- Tentative Council Meeting Agenda Calendar
- RTC 10-180 Update #2 Regarding Morse Avenue Park Site Development (Information Only)
- RTC 10-182 Opportunity for Council to Appeal Decisions of the Planning Commission of June 14, 2010 and the Administrative Hearing of June 16, 2010
- RTC 10-174 Update on Horizon 2035 Advisory Committee (Information Only)
- Draft Minutes of the Board of Library Trustees Meeting of June 7, 2010
- Draft Minutes of the Heritage Preservation Commission of June 2, 2010
- Draft Minutes of the Bicycle and Pedestrian Advisory Commission meeting of June 17, 2010
- Study Session Summary of June 15, 2010 – California High Speed Rail Authority Draft San Francisco–San Jose Alternatives Analysis
- Study Session Summary of June 22, 2010 – Civic Center Buildings: Renovate, Replace, or Relocate?

ADJOURNMENT TO THE REDEVELOPMENT AGENCY

Mayor Hamilton adjourned to the Redevelopment Agency meeting at 10:15 p.m.

Kathleen Franco Simmons
City Clerk

Date