

**APPROVED MINUTES\***  
**SUNNYVALE CITY COUNCIL**  
**TUESDAY, JULY 20, 2010**

**CALL TO ORDER**

Mayor Hamilton called the meeting to order in the Council Chambers.

**SALUTE TO THE FLAG**

Mayor Hamilton led the salute to the flag.

**ROLL CALL**

**PRESENT:**

Mayor Melinda Hamilton  
Vice Mayor Christopher Moylan  
Councilmember Otto Lee  
Councilmember Ron Swegles (by teleconference)  
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  
Acting Director of Finance Grace Leung  
Chief of Public Safety Don Johnson  
Director of Public Works Marvin Rose  
Principal Planner Andrew Miner  
City Clerk Kathleen Franco Simmons

**CLOSED SESSION REPORT FOR JULY 20, 2010**

*Closed Session pursuant to Government Code Section 54956.9(c) – Conference with Legal Counsel*

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

**PUBLIC ANNOUNCEMENTS**

None.

**PRESENTATION** – Kim Ferm, Director, 2-1-1 Santa Clara County, provided a presentation regarding the Santa Clara County 2-1-1 Program.

## **CONSENT CALENDAR**

A member of the public requested to pull Item 1.E from the Consent Calendar.

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

Councilmember Whittum disclosed that his home is within 500 feet of the item in 1.H. therefore his vote on the consent calendar will not be on Item 1.H.

VOTE: 7 - 0

- 1.A. MOTION Approval of Council Meeting Minutes of June 29, 2010
- 1.B. MOTION 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 10-185 No. 511, 512 and 513

Staff Recommendation: Review the attached lists of bills.

- 1.D. RESOLUTION Federal Transportation Funding – Approval of Resolution of Support and  
RTC 10-188 Budget Modification No. 1

Staff Recommendation: Alternative 1: Approve the Resolution of Support committing to complete the projects and stating the City's understanding of the funding process, and approve Budget Modification No. 1 to appropriate grant revenues in the amount of \$2,715,000 million from the VTA to the new Hendy Avenue Complete Street project and the Sunnyvale Avenue/Old San Francisco Road Left Turn project, as well as appropriate the total required local match of \$785,000 consisting of (1) \$267,000 from the Wastewater Fund and (2) \$518,000 from dedicated local transportation grant matching funds.

- 1.E. MOTION Purchase of 715 San Conrado Terrace, #6  
RTC 10-192

Public hearing opened at 7:19 p.m.

Tap Merrick expressed concerns regarding the housing assistance loan program and suggested renegotiation of existing mortgages and development of sound polices.

Public hearing closed at 7:23 p.m.

MOTION: Vice Mayor Moylan moved and Councilmember Griffith seconded the motion to approve Alternative 1: Approve the purchase of 715 San Conrado Terrace #6, and authorize the city manager to accept the Deed in lieu of Foreclosure.

VOTE: 7 - 0

## **Contracts**

- 1.F. MOTION Award of Contract for One Regenerative Air Street Sweeper (F0905-105)

RTC 10-191

Staff Recommendation: Award a contract for one regenerative air street sweeper in the amount of \$169,064, to GSC Environmental.

### **Other Items**

- 1.G. ORDINANCE Adoption of Ordinance No. 2922-10 Awarding Nonexclusive Franchise to Amritpal Singh, Doing Business as A-1 American Cab Company

Staff Recommendation: Approve second reading of Ordinance No. 2922-10.

- 1.H. RESOLUTION Adoption of a Resolution to Approve the Annual Engineer's Report for the RTC 10-186 Downtown Parking Maintenance District Assessment

Staff Recommendation: Alternative 1: Adopt the resolution to approve the annual Engineer's Report for FY 2010-11 and forward the assessment to the County of Santa Clara for inclusion on the property tax rolls.

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

None.

### **PUBLIC COMMENTS**

Ken Jorgensen spoke regarding Brown Act violations he alleged January 4, 2009 concerning selection of Dean Chu to serve in Councilmember Lee's absence. Jorgensen advised the City should act to deny the benefits to Mr. Chu and requested an item be placed on an agenda to discuss reimbursement of the overpayment of benefits to Councilmember Lee. Jorgenson provided copies of his materials to Council.

Margaret Lawson spoke regarding the fatal car accident last week at Remington Drive and Bernardo Avenue and urged Council to skip any studies and install a stop sign at that location as soon as possible.

Arthur Schwartz spoke of the need for a stop sign at the intersection at Remington Drive and Bernardo Avenue.

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

2. MOTION Proposed Charter Amendment for Directly-Elected Mayor for the November RTC 10-183 2011 Election

City Attorney David Kahn presented the staff report.

Public hearing opened at 7:50 p.m.

Arthur Schwartz stated he sees no advantage to the citizens of Sunnyvale or Councilmembers for an election for mayor that has no more duties than a Councilmember and read a written statement recounting the recommendation of the Charter Review Committee. Schwartz requested Council stay with the current system.

Tap Merrick stated he is opposed to having an election for a directly-elected mayor and to giving extra term lengths solely because the person was elected as mayor. Merrick suggested the term of mayor coincide with the eight years out of 12 that are available for the rest of Council and not allow additional add-ons.

Dave Jones stated he does not think this is right for the City. Jones recommended Council support Alternative 2.

Monica Schwenke stated she agrees with the previous speakers and the more time spent on politics is less time spent doing the job. Schwenke also referenced the costs associated with the special election and recommended Council support Alternative 2.

Jim Davis stated all seven Councilmembers have been directly elected by the community and one member is selected amongst themselves as mayor; there is no reason why the rest of Council can't use their leadership skills to continue projects they begin as mayor. Davis stated hours of the City Attorney's time have already been used, and hours spent discussing the issue at City Council meetings; the money could be used to pay for a police officer. Davis stated he hopes Council recognizes that you do not have to have a title to be a leader and if there is going to be a directly elected mayor then districts should be established.

Public hearing closed at 8:04 p.m.

MOTION: Councilmember Spitaleri moved and Councilmember Moylan seconded the motion to approve Alternative 1: to place a ballot measure for a Charter Amendment to a directly-elected Mayor on the November 2011 general election, and provide direction to staff to draft Charter amendment language and resolution based on Council selection of option a. with a Mayoral term of four years, and include that the Mayor could serve two four-year terms, or a total of eight years as Mayor.

FRIENDLY AMENDMENT: Councilmember Swegles moved a friendly amendment that after service of eight years on the Council, you must wait two years to run for Mayor. Councilmember Spitaleri declined to accept the friendly amendment.

FRIENDLY AMENDMENT: Councilmember Swegles moved a friendly amendment that after service of eight years as Mayor, you must wait four years to run for Council or Mayor again. Councilmember Spitaleri accepted this friendly amendment.

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

MOTION: Councilmember Swegles moved and Councilmember Spitaleri seconded the motion to approve Alternative 1.a: to place a ballot measure for a Charter Amendment to a directly-elected Mayor on the November 2011 general election, and provide direction to staff to draft Charter amendment language and resolution based on Council selection of option a. with Mayoral term of four years with term limits such that if you serve two terms on the Council you must have two years off before you can run as Mayor and after serving eight years as Mayor you must take four years off before you can run for Council or Mayor.

SUBSTITUTE MOTION: Councilmember Whittum moved a substitute motion to provide direction to staff to draft charter amendment language and resolution based on Council selection as follows: Mayoral term of two years; Mayoral term limits of eight years in a

twelve year period; and to clarify as on item c. on page 5 of the RTC that the Mayoral service counts toward term limits as a council member.  
Substitute motion died for lack of a second.

FRIENDLY AMENDMENT: Vice Mayor Moylan moved a friendly amendment to invoke the current requirement about eight years of service in a twelve-year period so that when someone has twelve years of consecutive service between Council-Mayor-Council or Mayor-Council-Mayor, or one of the two offices for eight years, then they must take four years off before running again.  
Councilmember Swegles accepted the friendly amendment.

FORMAL AMENDMENT: Whittum motioned an amendment that the term limit language be modified to read that: "Years of service as Mayor shall count towards the term limits as for a Council member."  
Formal amendment died for lack of a second.

Following clarification of the motion on the table and amendment, Councilmember Swegles withdrew acceptance of the friendly amendment proposed by Vice Mayor Moylan.

RESTATED and AMENDED MOTION: Councilmember Swegles restated the main motion and amended the motion to include that after service of a combination of four years as Council and four years as Mayor totaling eight years, there must be four years off.

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

MOTION: Councilmember Griffith moved and Councilmember Whittum seconded the motion to call to organize a charter review committee to come back with a better proposal than is being proposed. Councilmember Griffith restated the motion to provide direction to bring back at a later date to form a charter review committee to look at this issue.

FRIENDLY AMENDMENT: Councilmember Whittum offered an amendment to include on that agenda: directly-elect mayor, even-number election years, ending numbered seats. Councilmember Griffith restated the amendment to propose as part of assembling the charter review committee the Council prepare a list of questions the charter review committee should attempt to answer.  
Councilmember Whittum seconded the restatement of the amendment.

VOTE: 6 - 1 (Councilmember Swegles dissented)

3. MOTION Process for Appointing Interim Councilmembers (Study Issue)  
RTC 10-090

Assistant City Manager Robert Walker presented the staff report.

Public hearing opened at 9:18 p.m.

Mei-Ling Stefan stated she is in favor of the most open option including public interviews of candidates and encouraged Council to provide clear guidelines regarding public input.

Public hearing closed at 9:21 p.m.

MOTION: Councilmember Griffith moved and Vice Mayor Moylan seconded the motion to approve Alternative 3: to adopt a process that would have Council publicly announce the vacant seat, receive applications during an open application period, interview all candidates subject to the Brown Act, and make an appointment at a public hearing with opportunity for public comment with the following changes: refer to the situation as an interim opening rather than a vacant seat; merge the process with the existing application process for boards and commissions; direct staff to return with a draft questionnaire to be filled out by candidates; structure the meetings to allow the public to ask questions during a person's interview or otherwise provide comment; and if there are five or more candidates, use instant runoff voting.

FRIENDLY AMENDMENT: Mayor Hamilton offered an amendment: rather than specify staff spend time now developing a questionnaire, specify that as part of the process a questionnaire would be developed and let the future Council and staff figure it out. Councilmember Griffith declined to accept the friendly amendment.

VOTE: 7 - 0

4. MOTION            2010-7095 - Anthem Telecom, LLC [Applicant] Lockheed Missiles and  
RTC 10-184        Space Co. Inc. [Owner]: Application for 414-acre site located at 1111  
Lockheed Martin Way (near N. Mathilda Ave.) in an MP-I Zoning District  
(APN: 110-01-025). Special Development Permit to allow a 112-foot tall  
wireless telecommunications monopine on the Lockheed Martin campus  
including antennas for up to six carriers and associated ground equipment  
within a new enclosure.

Principal Planner Andrew Miner presented the staff report.

Public hearing opened at 9:39 p.m.

Matt Yergovich, Anthem Telecom, applicant, provided a PowerPoint presentation.

Mei-Ling Stefan asked questions of the applicant relating to the orientation of the surface for which the RF densities are calculated in Attachment G and the lead content in the materials for the tree. Stefan asked questions staff relating to availability of RF emission studies to the public. Mr. Yergovich and Principal Planner Miner provided responses.

Public hearing closed at 9:50 p.m.

MOTION: Vice Mayor Moylan moved and Councilmember Spitaleri seconded the motion to approve Alternative 1: Adopt the Negative Declaration and approve the Special Development Permit with the Conditions of Approval.

VOTE: 7 - 0

5. MOTION            Investment Advisory Agreement with PFM Asset Management LLC to  
RTC 10-187        Serve as Investment Manager for the City's Retiree Medical Trust

Acting Director of Finance Grace Leung presented the staff report.

Public hearing opened at 9:55 p.m.

No speakers.

Public hearing closed at 9:55 p.m.

MOTION: Councilmember Lee moved and Vice Mayor Moylan seconded the motion to approve Alternative 1: authorize the city manager to approve the attached Investment Advisory Agreement with PFM Asset Management LLC and take all necessary steps to establish and administer the City's retiree medical trust.

VOTE: 7 - 0

6. ORDINANCE     Ordinance to Amend Sunnyvale Municipal Code Chapter 1.05 to Authorize  
RTC 10-190       the Placement of Unpaid Administrative Citations on the County of Santa  
                         Clara Property Tax Roll

Acting Director of Finance Grace Leung presented the staff report.

Public hearing opened at 10:01 p.m.

No speakers.

Public hearing closed at 10:01 p.m.

MOTION: Vice Mayor Moylan moved and Councilmember Swegles seconded the motion to approve Alternative 1: Adopt an ordinance to amend Sunnyvale Municipal Code Chapter 1.05 to Authorize the Placement of Unpaid Administrative Citations on the County of Santa Clara Property Tax Roll.

City Clerk Kathleen Franco Simmons read the ordinance title.

VOTE: 7 - 0

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

Mayor Hamilton reported she and Councilmember Spitaleri attended a NOVA Open House for Elected Officials.

Vice Mayor Moylan reported that as chair of the Emergency Preparedness Council, he attended an Alert SCC press conference at the Sheriff's office.

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

Councilmember Spitaleri announced he will not attend the August 24 Council meeting. Councilmember Swegles expressed appreciation to Council and staff for their patience with his attending the meeting by teleconference.

Councilmember Lee announced he will likely not attend the August 10 and 24 Council meetings due to military leave.

**INFORMATION ONLY REPORTS/ITEMS**

- Tentative Council Meeting Agenda Calendar
- RTC 10-193 Boards and Commissions Semi-Annual Attendance Report, Reporting Period: July 2009 - June 2010 (Information Only)
- Draft Minutes of the Arts Commission Meeting of June 16, 2010

**ADJOURNMENT**

Mayor Hamilton adjourned the meeting in memory of Nadeine Malone at 10:07 p.m.

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Kathleen Franco Simmons  
City Clerk

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Date