

**DRAFT MINUTES\***  
**SUNNYVALE CITY COUNCIL**  
**TUESDAY, DECEMBER 7, 2010**

**CALL TO ORDER**

Mayor Hamilton called the meeting to order in 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 Anthony (Tony) Spitaleri  
Councilmember David Whittum  
Councilmember Jim Griffith

**ABSENT:**

Councilmember Ron Swegles (excused)

**STAFF PRESENT:**

City Manager Gary Luebbers  
Assistant to City Manager Robert Walker  
City Attorney David Kahn  
Director of Finance Grace Leung  
Deputy Chief of Public Safety Don Johnson  
Director of Public Works Marvin Rose  
Director of Community Development Hanson Hom  
City Clerk Kathleen Franco Simmons

**CLOSED SESSION REPORT FOR DECEMBER 7, 2010**

*Closed Session pursuant to Government Code Section 54957 – Public Employee Performance Evaluations*

Vice Mayor Moylan reported Council met in Closed Session and completed annual performance reviews of the City Manager and City Attorney; both employees received positive reviews. Vice Mayor Moylan reported that it should be noted that both voluntarily gave up their contractually entitled salary increases for next year, and thanked them on behalf of Council.

**PUBLIC ANNOUNCEMENTS**

None.

**PRESENTATION** – City Manager Gary Luebbers, Director of Public Works Marvin Rose, and Finance Director Grace Leung provided a status report on Sunnyvale Works! Program.

**CONSENT CALENDAR**

MOTION: Vice Mayor Moylan moved and Councilmember Lee seconded the motion to approve the Consent Calendar.

VOTE: 6 - 0 (Councilmember Swegles absent)

- 1.A. MOTION Approval of Council Meeting Minutes of November 16, 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 10-328 Nos. 531 and 532

Staff Recommendation: Review the attached lists of bills.

- 1.D. MOTION Approval of Budget Modification No. 20 to Appropriate \$4,111 of Office of  
RTC 10-333 Traffic Safety Grant Funds for Sobriety Checkpoints

Staff Recommendation: Alternative 1: Approve Budget Modification No. 20 to appropriate Office of Traffic Safety Sobriety Checkpoint grant funds in the amount of \$4,111.

- 1.E. MOTION Approval of Trust Agreement between the City of Sunnyvale, PFM Asset  
RTC 10-326 Management, LLC, and U.S. National Bank Association for the  
Sunnyvale Retiree Medical Trust

Staff Recommendation: Alternative 1: Approve the Trust Agreement and authorize the City Manager to sign it as currently presented.

**Personnel**

- 1.F. RESOLUTION Amendment to the Schedule of Pay of the Salary Resolution: Salary  
RTC 10-331 Adjustment for Pay Plan Category C (applies to Classified Public Safety  
Officers and Lieutenants) and Pay Plan Category D/E (applies to Public  
Safety Captains and Public Safety Deputy Chiefs) and Approval of  
Budget Modification No. 21

Staff Recommendation: Alternative 1: Amend Section 2.200 (Pay Plan Category C) and Section 2.300 (Pay Plan Category D/E) of the Schedule of Pay of the Salary Resolution to reflect the new pay rates, effective retroactive to July 11, 2010 and approve Budget Modification No. 21.

**Contracts**

- 1.G. MOTION Association of Bay Area Governments (ABAG) Agreement for Local  
RTC 10-317 Agency Participation in Bay Area-wide Trash Capture Demonstration  
Project Grant Contract

Staff Recommendation: Alternative 1: Delegate authority to the City Manager to sign the ABAG grant contract before December 30, 2010 to provide the City with \$102,000 to assist in the installation of full trash capture devices for compliance with Provision C.10 of the NPDES stormwater permit (MRP).

- 1.H. MOTION Award of Contract for Nine Crown Victoria Police Interceptor Vehicles  
RTC 10-332 (F1010-33)

Staff Recommendation: Award a contract in the amount of \$204,204 for nine Crown Victoria police interceptor vehicles to Sunnyvale Ford Lincoln Mercury.

- 1.I. MOTION Award of Contract for Self Contained Breathing Apparatus for the  
RTC 10-334 Department of Public Safety (F1011-51) and Approval of Budget  
Modification No. 22.

Staff Recommendation: Award a contract for one hundred self-contained breathing apparatus the amount of \$558,442, to Bauer Compressors, Inc. and approve Budget Modification No. 22 to provide funding for this purchase.

**Other Items**

- 1.J. ORDINANCE Adoption of Ordinance No. 2944-10 to Amend Certain Sections of, and  
2944-10 Add Certain Sections to, Chapter 12.60 (Stormwater Management) of  
Title 12 (Water And Sewers) of the Sunnyvale Municipal Code

Staff Recommendation: Approve second reading of Ordinance No. 2944-10.

Approved with the Consent Calendar by the following vote:  
VOTE: 6 - 0 (Councilmember Swegles absent)

Following the Public Comment period, Mayor Hamilton announced this item had been requested by a member of the public to be pulled for public comment.

MOTION: Vice Mayor Moylan moved and Councilmember Griffith seconded the motion to reconsider Item 1.J.

VOTE: 6 - 0 (Councilmember Swegles absent)

Mayor Hamilton announced the reconsideration of Item 1.J: Adoption of Ordinance No. 2944-10 to Amend Certain Sections of, and Add Certain Sections to, Chapter 12.60 of Title 12 of the Sunnyvale Municipal Code.

Public hearing opened at 7:38 p.m.

Sheila McGuire, representing Toll Brothers, expressed concerns as reflected in a letter submitted earlier that the proposal will shift the burden of maintenance of stormwater systems to property owners and asked the second reading to be postponed.

Public hearing closed at 7:40 p.m.

Following information provided by staff in response to speaker comments, Councilmember Whittum moved to reopen the public hearing to receive additional comment from the speaker.

Motion died for lack of a second.

MOTION: Vice Mayor Moylan moved and Councilmember Griffith seconded the motion to approve the second reading of Ordinance No. 2944-10.

VOTE: 5 – 1 (Councilmember Whittum dissented, Councilmember Swegles absent)

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

None.

### **PUBLIC COMMENTS**

Steve Hoffman spoke regarding written materials which he provided, titled: Executive Summary, Municipal Code Violations at 162 N. Wolfe Road.

Arthur Schwartz, extended appreciation to Council and staff regarding the Sunnyvale Works! Program.

Tap Merrick, spoke in opposition to the upcoming medical marijuana dispensary issue.

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

- |    |                      |  |
|----|----------------------|--|
| 2. | MOTION<br>RTC 10-336 | Consideration of Revision of Council Policy 7.2.19, <i>Boards and Commissions</i> to Increase the Number of Members of the Sustainability Commission |
|----|----------------------|--|

Councilmember Griffith reported the Council Subcommittee declined to meet regarding consideration of increasing the number of members of the Sustainability Commission and recommended if approved, Council also determine whether to change the minimum number of appointees for Category Two.

Public hearing opened at 7:48 p.m.

No speakers.

Public hearing closed at 7:48 p.m.

MOTION: Vice Mayor Moylan moved and Councilmember Whittum seconded the motion to approve Alternative 1: Increase the number of Sustainability Commission members from five to seven, **and** leave the minimum number of appointees for Category Two at one.

VOTE: 6 - 0 (Councilmember Swegles absent)

3. MOTION Board and Commission Appointments  
RTC 10-337

MOTION: Councilmember Griffith moved and Councilmember Whittum seconded the motion to defer appointments to the Parks and Recreation Commission to the next cycle.

FRIENDLY AMENDMENT: Vice Mayor Moylan suggested a friendly amendment that in future, we will not include applicants for any opening unless that opening has been announced in all of the various ways, including an announcement from the dais.

Councilmember Griffith declined to accept the friendly amendment due to his concern that the amendment is outside the scope of the issue on the agenda.

Without objection, Councilmember Griffith requested that staff be given direction that in future, Council will not be given the opportunity to vote on a category for which it hasn't been announced by the cutoff date.

VOTE on MOTION: 6 - 0 (Councilmember Swegles absent)

**Arts Commission (1 vacancy)**  
*One term expiring June 30, 2014*

Karun, Vinita

VOTE: 6 - 0 (Councilmember Swegles absent)

City Clerk Kathleen Franco Simmons announced Vinita Karun has been appointed to the Arts Commission for a term ending June 30, 2014.

**Personnel Board (2 vacancies, employee-nominated category)**  
*One term expiring June 30, 2014*  
*One term expiring June 30, 2012*

Votes for candidates for the term expiring June 30, 2014 were as follows:

Donnelly, William (Bill)

VOTE: 2 - 0 (Councilmembers Lee, Griffith, Moylan, Hamilton abstained, Councilmember Swegles absent)

Jacob, Oliver

VOTE: 2 - 0 (Councilmembers Griffith, Moylan, Hamilton, Spitaleri abstained, Councilmember Swegles absent)

Ketzel, Marc

VOTE: 5 - 0 (Vice Mayor Moylan abstained, Councilmember Swegles absent)

Mittal, Rohit

VOTE: 2 - 0 (Councilmembers Griffith, Moylan, Hamilton, Spitaleri abstained, Councilmember Swegles absent)

Oberman, Traci (employee nomination)  
VOTE: 6 - 0 (Councilmember Swegles absent)

Without objection, Vice Mayor Moylan recommended appointment of the second-highest vote-getter to the term expiring June 30, 2012, to result in the following appointments:  
Traci Oberman appointed to the Personnel Board for a term ending June 30, 2014.  
Marc Ketzler appointed to the Personnel Board for a term ending June 30, 2012.

**Sustainability Commission (7 openings, one Category Two and six Category One)**  
*Terms to be determined pursuant to Charter Section 1002*

Votes for candidates for the one seat for Category Two of the Sustainability Commission were as follows:

Gill, Faheem  
VOTE: 2 - 0 (Councilmembers Lee, Griffith, Moylan, Hamilton abstained, Councilmember Swegles absent)

Harrison, Sue  
VOTE: 6 - 0 (Councilmember Swegles absent)

Naim, Tahir  
VOTE: 3 - 0 (Councilmembers Griffith, Moylan, Hamilton abstained, Councilmember Swegles absent)

City Clerk Kathleen Franco Simmons announced Sue Harrison has been selected for Category Two of the Sustainability Commission.

Votes for candidates for the six seats for Category One of the Sustainability Commission were as follows:

Berrios, Maureen  
VOTE: 2 - 0 (Councilmembers Lee, Griffith, Moylan, Hamilton abstained, Councilmember Swegles absent)

Brennan, Cathleen  
VOTE: 3 - 0 (Councilmembers Lee, Griffith, Moylan abstained, Councilmember Swegles absent)

Cordes, John  
VOTE: 4 - 0 (Councilmembers Spitaleri, Whittum abstained, Councilmember Swegles absent)

Doi, Russell  
VOTE: 3 - 0 (Councilmembers Griffith, Moylan, Spitaleri abstained, Councilmember Swegles absent)

Fukumoto, Barbara  
VOTE: 6 - 0 (Councilmember Swegles absent)

Glaser, Gerald  
VOTE: 4 - 0 (Vice Mayor Moylan and Councilmember Spitaleri abstained, Councilmember Swegles absent)

Green-Heffern, Joseph  
VOTE: 4 - 0 (Councilmembers Lee, Griffith abstained, Councilmember Swegles absent)

Hafeman, Dan  
VOTE: 6 - 0 (Councilmember Swegles absent)

Jelfs, Kim  
VOTE: 3 - 0 (Vice Mayor Moylan and Councilmembers Spitaleri, Whittum abstained, Councilmember Swegles absent)

Myers, Jennifer  
VOTE: 2 - 0 (Councilmembers Lee, Griffith, Moylan, Hamilton abstained, Councilmember Swegles absent)

Naim, Tahir  
VOTE: 3 - 0 (Councilmembers Griffith, Moylan, Hamilton abstained, Councilmember Swegles absent)

Srivastava, Amit  
VOTE: 4 - 0 (Mayor Hamilton and Councilmember Spitaleri abstained, Councilmember Swegles absent)

Wheeler, Regina  
VOTE: 4 - 0 (Councilmembers Lee, Griffith abstained, Councilmember Swegles absent)

Mayor Hamilton facilitated an opportunity to discuss whether to vote on Faheem Gill, an applicant for Category Two, as a qualified candidate for Category One. Discussion produced support of three Councilmembers to hold a vote on the candidate. A motion was made by Councilmember Whittum to vote on Faheem Gill as a candidate for Category One. Mayor Hamilton announced a vote would be held on the candidate.

Gill, Faheem  
VOTE: 1 - 1 (Councilmember Spitaleri dissented, Councilmembers Lee, Griffith, Moylan, Hamilton abstained, Councilmember Swegles absent)

Mayor Hamilton directed the two candidates who received six votes to be declared appointed.

City Clerk Kathleen Franco Simmons announced Barbara Fukumoto and Dan Hafeman have been selected for Category One of the Sustainability Commission.

Votes for candidates for the four remaining seats for Category One of the Sustainability Commission were as follows:

Cordes, John  
VOTE: 4 - 0 (Councilmembers Spitaleri, Whittum abstained, Councilmember Swegles absent)

Glaser, Gerald

VOTE: 4 - 0 (Vice Mayor Moylan, Councilmember Spitaleri abstained, Councilmember Swegles absent)

Green-Heffern, Joseph

VOTE: 4 - 0 (Councilmembers Lee, Griffith abstained, Councilmember Swegles absent)

Srivastava, Amit

VOTE: 5 - 0 (Mayor Hamilton abstained, Councilmember Swegles absent)

Wheeler, Regina

VOTE: 4 - 0 (Councilmembers Lee, Griffith abstained, Councilmember Swegles absent)

Mayor Hamilton directed the candidate who received five votes to be declared appointed.

City Clerk Kathleen Franco Simmons announced Amit Srivastava has been selected for Category One of the Sustainability Commission.

Mayor Hamilton facilitated the opportunity to discuss whether to conduct one more round of votes to select the remaining three members from the four candidates or to select them pursuant to Council policy. Discussion produced support of three Councilmembers to hold one more round of votes. Mayor Hamilton announced one more round of votes would be conducted.

Votes for candidates for the three remaining seats for Category One of the Sustainability Commission were as follows:

Cordes, John

VOTE: 3 - 0 (Mayor Hamilton and Councilmembers Spitaleri, Whittum abstained, Councilmember Swegles absent)

Glaser, Gerald

VOTE: 4 - 0 (Vice Mayor Moylan and Councilmember Spitaleri abstained, Councilmember Swegles absent)

Green-Heffern, Joseph

VOTE: 5 - 0 (Councilmember Griffith abstained, Councilmember Swegles absent)

Wheeler, Regina

VOTE: 5 - 0 (Councilmember Griffith abstained, Councilmember Swegles absent)

City Clerk Kathleen Franco Simmons announced Gerald Glaser, Joseph Green-Heffern, and Regina Wheeler received the requisite votes for appointment to the Sustainability Commission.

4. MOTION FY 2009/2010 Budgetary Year-End Financial Report, Comprehensive  
RTC 10-330 Annual Financial Report, Redevelopment Agency Financial Report, and  
Sunnyvale Financing Authority Financial Report

Finance Director Grace Leung presented the staff report.

Public hearing opened at 8:50 p.m.

No speakers.

Public hearing closed at 8:50 p.m.

MOTION: Vice Mayor Moylan moved and Councilmember Spitaleri seconded the motion to receive and file the budgetary Year-End Financial Report, the audited Comprehensive Annual Financial Report, the Memorandum on Internal Control and Required Communications issued by the independent auditors, the Redevelopment Agency Financial Report, and the Sunnyvale Financing Authority Financial Report.

VOTE: 6 - 0 (Councilmember Swegles absent)

5. RECONSIDER      Reconsideration of Council action taken November 9, 2010 regarding:  
RTC 10-300      Adoption of 2010-2011 Charter Review Committee, Including Scope of  
                                 Authority and Appointment Procedures

City Attorney David Kahn presented the staff report.

Public hearing opened at 8:55 p.m.

No speakers.

Public hearing closed at 8:55 p.m.

MOTION: Vice Mayor Moylan moved and Councilmember Spitaleri seconded the motion to take the same action as last time, except instead of being silent on the issue of the role of the Mayor, to explicitly say that changing the role of the Mayor would not be part of the Charter Review Committee's discussion and to say that Council would make the appointments to the committee on January 25<sup>th</sup>.

VOTE: 2 - 4 (Councilmembers Lee, Griffith, Hamilton, Whittum dissented, Councilmember Swegles absent)  
Motion failed.

MOTION: Councilmember Whittum moved the previous motion, with the addition that the committee could consider ending seat numbers as a Charter measure.  
Motion died for lack of a second.

MOTION: Councilmember Griffith moved and Vice Mayor Moylan seconded the motion to form the Charter Review Committee, to consider everything Council previously voted to consider except for the role of the Mayor.

VOTE: 4 - 2 (Councilmember Lee, Whittum dissented, Councilmember Swegles absent)

MOTION: Vice Mayor Moylan moved and Councilmember Spitaleri seconded the motion to extend the time period for people to apply for the Charter Review Committee so the appointments can be made January 25, 2011.

VOTE: 5 - 1 (Councilmember Griffith dissented, Councilmember Swegles absent)

MOTION: Councilmember Whittum moved and Councilmember Griffith seconded the motion that the scope of what the committee reviews should be limited with respect to term limits such that the present term limits as they apply to Councilmembers would apply also to the Mayor.

VOTE: 2 - 4 (Councilmember Lee, Moylan, Hamilton, Spitaleri dissented, Councilmember Swegles absent)  
Motion failed.

MOTION: Councilmember Whittum moved and Councilmember Griffith seconded the motion to set-up interviews.

VOTE: 3 - 3 (Councilmembers Moylan, Hamilton, Spitaleri dissented, Councilmember Swegles absent)  
Motion failed.

6. ORDINANCE Voluntary Campaign Expenditure Limit  
RTC 10-309

City Clerk Kathleen Franco Simmons presented the staff report.

Public hearing opened at 9:31 p.m.

No speakers.

Public hearing closed at 9:31p.m.

MOTION: Councilmember Whittum moved and Councilmember Moylan seconded the motion to approve Alternative 1: Introduce an ordinance amending Sunnyvale Municipal Code Section 2.28.010 to implement voluntary campaign expenditure limits as submitted (Attachment A).

FRIENDLY AMENDMENT: Vice Mayor Moylan offered an amendment to the motion to clarify that as part of the process it would be based on the number of registered voters as of the deadline for filing nomination papers.  
Councilmember Whittum accepted the amendment.

VOTE: 3 - 3 (Councilmembers Griffith, Hamilton, Spitaleri dissented, Councilmember Swegles absent)  
Motion failed.

7. ORDINANCE Ordinance to Renew a Franchise Agreement for Conveyance of Nitrogen  
RTC 10-329 Gas - Air Products and Chemicals Incorporated and Air Products  
Manufacturing Corporation

Director of Public Works Marvin Rose presented the staff report.

Public hearing opened at 9:47 p.m.

No speakers.

Public hearing closed at 9:47 p.m.

MOTION: Councilmember Moylan moved and Councilmember Griffith seconded the motion to approve Alternative 1: Adopt the ordinance granting Air Products and Chemicals, Incorporated and Air Products Manufacturing Corporation a 15-year non-exclusive franchise for nitrogen gas transmission throughout the City.

City Clerk Kathleen Franco Simmons read the ordinance title.

VOTE: 6 - 0 (Councilmember Swegles absent)

8. ORDINANCE Award of Taxicab Franchise to A Orange Cab, Inc.  
RTC 10-322

Director of Public Safety Don Johnson presented the staff report.

Public hearing opened at 9:49 p.m.

No speakers.

Public hearing closed at 9:49 p.m.

MOTION: Councilmember Lee moved and Councilmember Moylan seconded the motion to approve Alternative 1: Introduce and adopt an ordinance awarding a non-exclusive franchise for taxicab service to A Orange Cab, Inc. for the period of January 14, 2011 through January 13, 2013 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 Lee reported five Councilmembers attended the National League of Cities annual meeting. He stated he was honored to have been selected to serve on the Nominating Committee and nominations were made for Vice President and the NLC Board of Directors.

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

- Council

Councilmember Griffith suggested the bicycle licensing program should be improved or eliminated.

Councilmember Whittum suggested three budget items to include for consideration:

- 1- Use of an L-shaped right-of-way owned by the Santa Clara Valley Water District west of Lawrence called the El Camino Storm Drain; the request would be to consider a budget item would be \$ 10,000 to allow staff 20 hours to look at this to provide for bike and pedestrian access.

- 2- Unused right-of-way parcels south of 237, west of Fair Oaks close to the light rail station; upfront capital costs could be paid for with cash flow from several hundred parking spaces on those lots; the budget item would be \$ 10,000 to allow staff 20 hours to scope the upfront cost and cash flow for Smart Meters self-pay, unattended parking by the Tasman Light Rail.
- 3- Wildwood intersection improvement project approved by Council six or seven years ago; the suggestion is for an explicit budget item to seek funding for that project.

Councilmember Griffith provided recommendations on the three items suggested by Councilmember Whittum: the first item could be included in the Lawrence Station study; the second item would be a study issue, not a budget issue. Councilmember Griffith stated he would co-sponsor it as a study issue. With regard to the third item on the Wildwood intersection improvement project, he stated it is still on VTA's potential projects awaiting their decision.

Vice Mayor Moylan spoke regarding the study issue and stated Councilmember Swegles was enthusiastic about the parking lot concept to handle overflow parking for large events on Persian Drive.

- Staff

None.

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

- Tentative Council Meeting Agenda Calendar
- RTC 10-335 Opportunity for Council to Appeal Decisions of the Planning Commission meeting of November 22, 2010 and the Zoning Administrator Hearing of November 24, 2010
- Study Session Summary – Board and Commission Interviews, November 9, 2010
- Study Session Summary – Board and Commission Interviews, November 15, 2010
- Study Session Summary – Board and Commission Interviews, November 16, 2010
- Study Session Summary – Discussion of Council 2011 IGR Assignments, November 16, 2010
- Draft Minutes of the Parks and Recreation Commission Meeting of November 10, 2010
- Draft Minutes of the Arts Commission Meeting of November 17, 2010
- Draft Minutes of the Bicycle and Pedestrian Advisory Commission meeting of November 18, 2010
- Approved Minutes of the Heritage Preservation Commission meeting of November 3, 2010

#### **ADJOURNMENT**

Mayor Hamilton adjourned the meeting at 10:01 p.m.