

DRAFT MINUTES*
SUNNYVALE CITY COUNCIL
TUESDAY, SEPTEMBER 13, 2011

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 Jim Griffith
Councilmember Otto Lee
Councilmember Christopher Moylan
Councilmember Anthony (Tony) Spitaleri
Councilmember David Whittum

ABSENT:

None.

STAFF PRESENT:

City Manager Gary Luebbers
City Attorney David Kahn
Director of Finance Grace Leung
Deputy Chief of Public Safety Dayton Pang
Director of Community Development Hanson Hom
Director of Public Works Kent Steffens
Director of Environmental Services Department John Stufflebean
City Clerk Kathleen Franco Simmons

SPECIAL ORDER OF THE DAY – Presentation of Certificate of Congratulation to Anjini Karthik, Grand Prize winner in the Synopsys Science and Technology Championship

PUBLIC ANNOUNCEMENTS

Councilmember Spitaleri announced the upcoming El Camino Real Bus Rapid Transit Open House.

Richard Kolber, Democratic Club of Sunnyvale, announced an upcoming meeting of the club.

Mayor Hamilton read a letter of appreciation from Pat Castillo regarding the memorial service for Ron Swegles.

CONSENT CALENDAR

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

VOTE: 6 - 0

- 1.A. MOTION Approval of Council Meeting Minutes of August 23, 2011
- 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 11-198 Nos. 569, 570 and 571

Staff Recommendation: Review the attached lists of bills.

- 1.D. MOTION Authorization for the City Manager to Execute Cooperative Agreements
RTC 11-187 and Accept Financial Contributions for Funding of a Stevens Creek Trail
Joint Cities Alignment and Feasibility Study and Approval of Budget
Modification No. 6

Staff Recommendation: Alternative 1: Authorize the City Manager or his designee to execute required cooperative agreements with the cities of Mountain View, Los Altos, and Cupertino for Stevens Creek Trail Feasibility Study funding, and approve Budget Modification No. 6 to appropriate: (1) funding contributions from the partner cities of Mountain View, Los Altos, and Cupertino totaling \$27,500; (2) a financial donation of \$5,000 from the Stevens Creek Trail community group; and (3) \$7,795 from the Santa Clara VTA in Project 828840-Project Readiness Initiative, for a total increase of \$40,295 to the current budget in Project 829200 - Stevens Creek Trail Feasibility Study.

Contracts

- 1.E. MOTION Award of Contract for the Phase 1 Design of the Community Center
RTC 11-199 Comprehensive Infrastructure Project (F1002-83)

Staff Recommendation: Award a contract in the amount of \$107,650 to Winzler & Kelly for the subject project, and authorize the City Manager to execute the contract when all the necessary conditions have been met; and approve a 10% design contingency in the amount of \$10,765.

- 1.F. MOTION Award of Bid No. F1107-01 for Tennis Court Repairs-Rebid and Approval
RTC 11-197 of Budget Modification No. 10

Staff Recommendation: Award a contract in the amount of \$215,851, to R&M Paving Contractors, Inc., for the subject project, and authorize the City Manager to execute the contract when all the necessary conditions have been met; approve a construction contingency in the amount of \$21,585; and approve Budget Modification No. 10 to appropriate additional funding for this project.

- 1.G. MOTION Award of Bid No. F1107-06 for Public Safety Building Roofing
RTC 11-200 Improvements, Phase B

Staff Recommendation: Award a contract in the amount of \$294,920, to Western Roofing Service for the subject project, and authorize the City Manager to execute the contract when all the necessary conditions have been met; and approve a 10% project contingency in the amount of \$29,492.

Other Items

- 1.H. ORDINANCE Adoption of Ordinance No. 2954-11 Amending Section 8.16.180 of
NO. 2954-11 Chapter 8.16 (Solid Waste Management and Recycling) of Title 8
(Health and Safety) of the Sunnyvale Municipal Code relating to
Impounding Refuse Containers and Requirements for Tarping Open
Bed Trucks

Staff Recommendation: Approve second reading of Ordinance No. 2954-11.

PUBLIC COMMENTS

None.

PUBLIC HEARINGS/GENERAL BUSINESS

2. RESOLUTIONS 2011-7543 - Resolutions to Update the City-wide Green Building Tables
RTC 11-188 and to Amend the Moffett Park Specific Plan Regarding Green Building
Requirements

Director of Community Development Hanson Hom presented the staff report.

Public hearing opened at 7:16 p.m.

Sue Harrison stated she is a green building professional and provided information regarding requirements to meet green building standards and significant ways of reducing greenhouse gases.

Barbara Fukumoto, speaking for herself, stated the current recommendations are backing off those originally proposed in 2009 and urged standards for residential remodels.

Philip Mahoney, Partner, Cornish & Carey Commercial, stated that by adopting the measures, job creation would be enhanced, tenants would be attracted, and it would give a boost to retail and hotel corridors, and urged Council to heed the perishable-ness of the cycle.

Arthur Schwartz stated he is on the construction committee for Habitat for Humanity Santa Clara County and they were surprised to find how easy it is to meet 100 points and suggested that be the standard. Schwartz also spoke regarding not giving a 10 percent bonus without environmental review.

Kerry Haywood, representing the Moffett Park Business Group, asked that Council approve the staff recommendation.

Public hearing closed at 7:47 p.m.

MOTION: Councilmember Lee moved and Councilmember Spitaleri seconded the motion to approve Alternative 1: Adopt the Resolutions in Attachment A and Attachment B to A) update the Green Building Tables and clarify that the incentives are consistent with planned General Plan growth and B) Amend the Moffett Park Specific Plan to clarify that development up to 80% FAR is allowed through the Green Building Program, **And** ask that this come back to Council in 12 months or less and go through the Sustainability Commission for review.

VOTE: 4 - 2 (Councilmembers Moylan and Whittum dissented)

3. MOTION 2011-7119: Major Moffett Park Design Review for the addition of an
RTC 11-194 approximate 200,000 sf. fifth office building at the Ariba/Moffett Towers
 campuses. Project includes Green Building LEED Gold incentive
 resulting in 80% Floor Area Ratio, and requires modification to the
 existing development agreement (Planning Application 2011-7507). Jay
 Paul Company [Applicant] Moffett Park Dr. LLC and Moffett Towers LLC:
 803-809 Eleventh Ave. (APN 110-45-001 through 008)

Mayor Hamilton reported Items 3, 4, and 5 would be heard at one time.

Director of Community Development Hanson Hom presented the staff report for Items 3, 4 and 5 combined.

Public hearing opened at 8:41 p.m.

Jay Paul, Applicant, provided information regarding the projects and highlighted elements that will make it successful, including the TDM Plan, light rail, the Ellis intersection, other planned infrastructure and the green building aspects.

Dawn Jedkins, DES Architects and Engineers, provided additional information and a PowerPoint presentation.

Dan Hafeman stated he was encouraged by the Ellis work as he was concerned about potential traffic issues. Hafeman expressed concern regarding limited freeway access to the development.

Arthur Schwartz complimented Jay Paul on the projects and stated he would like the City to take a serious look at an alternative bridge design for Mary Avenue that does not promote a lot of automobile traffic.

Public hearing closed at 9:14 p.m.

MOTION: Councilmember Lee moved and Councilmember Spitaleri seconded the motion to approve Alternative 2: Adopt the Mitigated Negative Declaration and approve the Major Moffett Park Design Review with modified conditions:

- 1) Add to condition to GC-9(b) to require a surety bond for the retrofit of existing buildings to LEED Gold;
- 2) Add to condition to GC-9 to strive for LEED Platinum standard for the project;
- 3) Add a condition of approval to work with City of Mountain View staff to study the mitigation of Ellis Avenue access.

FRIENDLY AMENDMENT: Councilmember Whittum offered a friendly amendment to replace the phrase referring to "Mary Avenue over crossing" with the phrase "appropriate TSP project(s)."

Councilmember Lee accepted the friendly amendment.

VOTE: 5 - 1 (Councilmember Moylan dissented)

4. MOTION 2011-7170: Major Moffett Park Design Review for modification of Building
RTC 11-193 'D' at the Moffett Towers campus (net increase of about 125,000 sf.).
Project includes Green Building LEED Gold incentive resulting in 80%
Floor Area Ratio, and requires modification to the existing development
agreement (Planning Application 2011-7507). Jay Paul Company
[Applicant] Moffett Towers Lot 3 LLC: 1100-1180 Enterprise Way (APN
110-57-001 through 006)

Director of Community Development Hanson Hom presented the staff report for Items 3, 4 and 5 combined, under Item 3.

The public hearing was held under Item 3.

MOTION: Councilmember Lee moved and Councilmember Spitaleri seconded the motion to approve: Alternative 2: Adopt the Mitigated Negative Declaration and approve the Major Moffett Park Design Review with modified conditions:

- 1) Add a condition to GC-8(b) to require a surety bond issue for the retrofit of existing buildings to LEED Gold to the extent necessary;
- 2) Add a condition to GC-8 to strive for LEED Platinum standard for the project;
- 3) Add a condition to work with City of Mountain View staff to study the mitigation of Ellis Avenue access.
- 4) Replace references to "Mary Avenue Overcrossing" with the phrase "appropriate Transportation Strategic Program (TSP) project(s)" in the conditions of approval.

VOTE: 5 - 1 (Councilmember Moylan dissented)

5. ORDINANCES 2011-7507 Modification to two Development Agreements between the
RTC 11-191 City of Sunnyvale and: 1) Moffett Park Dr. LLC and Moffett Towers LLC;
and, 2) Moffett Towers Lot 3 LLC; and, Performance Review of said
Development Agreements. Jay Paul Company [Applicant]:
1) 990-1080 Enterprise Way and 803-809 Eleventh Ave.
2) 1100-1180 Enterprise Way

Director of Community Development Hanson Hom presented the staff report for Items 3, 4 and 5 combined, under Item 3.

The public hearing was held under Item 3.

MOTION: Councilmember Lee moved and Councilmember Spitaleri seconded the motion to approve Alternative 1: Confirm the findings in Attachment D and introduce an ordinance to amend the Development Agreement between Moffett Towers LLC / Moffett Park Dr. LLC and the City of Sunnyvale (Attachment B); and Alternative 2: Confirm the findings in Attachment D and introduce an ordinance to amend the Development Agreement between Moffett Towers Lot 3 LLC and the City of Sunnyvale (Attachment C); and Alternative 5: Find that the developer is in compliance with the terms of the development agreements.

City Clerk Kathleen Franco Simmons read the ordinance titles.

VOTE: 6 - 0

6. MOTION Appointments to the Bay Area Water Supply and Conservation Agency
RTC 11-189 and the San Francisco Regional Water System Financing Authority to
Serve Remainder of Four Year Terms: July 2011 – June 2015

Director of Environmental Services John Stufflebean presented the staff report.

Public hearing opened at 9:42 p.m.

No speakers.

Public hearing closed at 9:42 p.m.

Vice Mayor Griffith expressed interest in the appointments.

MOTION: Councilmember Lee moved and Councilmember Spitaleri seconded the motion to appoint Vice Mayor Griffith to serve as a director of both the BayArea Water Supply and Conservation Agency (BAWSCA), and to serve as director of the San Francisco Regional Water System Financing Authority (Authority) and establish a schedule of semi-annual briefing memoranda on BAWSCA and Authority issues, to be provided by the appointee[s] or staff.

VOTE: 6 - 0

7. MOTION City Positions on League of California Cities' 2011 Annual Resolutions
RTC 11-192

Assistant City Manager Robert Walker presented the staff report for Items 7 and 8.

Public hearing opened at 9:44 p.m. for Items 7 and 8.

No speakers.

Public hearing closed at 9:44 p.m.

MOTION: Vice Mayor Griffith moved and Councilmember Lee seconded the motion to take a position in support of League Resolution #1 *Alternative Methods of Meeting Public Notice Requirements*.

VOTE: 5 - 1 (Councilmember Whittum dissented)

MOTION: Vice Mayor Griffith moved and Councilmember Whittum seconded the motion to take a position in support of League Resolution #3 *Raising Public Awareness about the Imminent Health and Safety Concerns for Bullied Children*.

VOTE: 6 - 0

MOTION: Vice Mayor Griffith moved and Councilmember Lee seconded the motion to take a position in support of League Resolution #4 *Prison Rape Elimination Act of 2003*.

VOTE: 3 - 1 - 2 (Councilmember Spitaleri dissented, Mayor Hamilton and Councilmember Whittum abstained)
Motion carried.

MOTION: Vice Mayor Griffith moved and Councilmember Whittum seconded the motion to re-vote the previous motion to take a position in support of League Resolution #4 *Prison Rape Elimination Act of 2003*.

VOTE: 3 - 0 - 3 (Councilmember Spitaleri, Mayor Hamilton, and Councilmember Whittum abstained)
Motion carried.

MOTION: Vice Mayor Griffith moved and Councilmember Moylan seconded the motion to take a position in support of League Resolution #5 *Replacement of the Death Penalty*.

VOTE: 4 - 0 - 2 (Councilmembers Spitaleri and Whittum abstained)
Motion carried.

MOTION: Vice Mayor Griffith moved and Councilmember Lee seconded the motion to take a position in opposition of League Resolution #6 *Resolution In Honor of the City of Bell*.

VOTE: 3 - 2 - 1 (Mayor Hamilton and Councilmember Lee dissented, Councilmember Whittum abstained)
Motion carried.

MOTION: Councilmember Moylan moved and Councilmember Lee seconded the motion to take a position in support of League Resolution # 2 *Tort Reform*.

VOTE: 1 - 3 - 2 (Councilmember Lee, Councilmember Spitaleri and Mayor Hamilton dissented, Vice Mayor Griffith and Councilmember Whittum abstained)
Motion failed.

8. MOTION League of Cities Peninsula Division Election of Officers
RTC 11-186

Assistant City Manager Robert Walker presented the staff report under Item 7.

The public hearing was held under Item 7.

MOTION: Vice Mayor Griffith moved and Councilmember Spitaleri seconded the motion to approve the proposed slate:

President

Steve Tate, Mayor, Morgan Hill

Vice President

Rich Garbarino, Vice Mayor, South San Francisco

Secretary-Treasurer

Steve Rice, Vice Mayor, Los Gatos

Board Director

Art Kiesel, Vice Mayor, Foster City

At-large (Santa Clara County)

Chuck Page, Vice Mayor, Saratoga

At-large (San Mateo County)

Kirsten Keith, Mayor Pro-Tem, Menlo Park

VOTE: 6 - 0

9. MOTION Appointment of Ethics Subcommittee and Possible Funding of Ethics
RTC 11-202 Brochure

Assistant City Manager Robert Walker presented the staff report.

Public hearing opened at 10:18 p.m.

No speakers.

Public hearing closed at 10:18 p.m.

MOTION: Councilmember Moylan moved and Councilmember Spitaleri seconded the motion to establish an Ethics Subcommittee of three members of the City Council who are not currently running for office, that the committee immediately set about the task of updating the Ethics Brochure, and that the committee come back to Council with a recommendation of how it would like to handle any additional debates beyond the one that is already scheduled by the League of Women Voters, and if they wish to have a "Last Word" event.

AMENDMENT: Councilmember Spitaleri moved and Councilmember Whittum seconded the motion that the committee only deal with candidates and not the measures.
Councilmember Moylan accepted the amendment.

AMENDMENT: Councilmember Moylan amended the motion to include Alternative 3: Authorize an expenditure of \$6,000 for the printing and mailing of the City's "Campaign Ethics Guide" prior to the November election.

FRIENDLY AMENDMENT: Councilmember Whittum offered a friendly amendment to add to the end of Alternative 2: Authorize the Ethics Subcommittee to approve any revisions to the City's "Campaign Ethics Guide" prior to public distribution, the phrase "subject to Council approval."

Councilmember Moylan conceded the point, but declined to accept the friendly amendment.

FRIENDLY AMENDMENT: Councilmember Whittum offered a friendly amendment to add to the end of Alternative 2: Authorize the Ethics Subcommittee to approve any revisions to the City's "Campaign Ethics Guide" prior to public distribution, the phrase "subject to the Mayor's approval."

Councilmember Moylan accepted the friendly amendment.

Councilmembers Moylan, Spitaleri, and Lee volunteered to serve on the Ethics Subcommittee.

VOTE: 6 - 0

MOTION: Councilmember Moylan moved and Councilmember Spitaleri seconded the motion to establish a policy to automatically consider the appointment of an Ethics Subcommittee before September of every election year.

VOTE: 6 - 0

MOTION: Councilmember Whittum moved to approve Alternative 4.a.: The Chair of a board or commission shall be directly notified in advance when agenda items that include the commission's reports are on an agenda to come before Council, and Alternative 4.f.: Staff shall support a public, online e-notify mechanism for all board and commission agendas. Motion died for lack of second.

MOTION: Vice Mayor Griffith moved and Councilmember Spitaleri seconded the motion to approve Alternative 4.b: Commissions are required to have the chair or a designated alternate present at Council to present the commission's position on all non-consent calendar items, Alternative 4.c: Council shall hold regular (quarterly or otherwise) meetings of chairs and possibly vice chairs, with the full council present, possibly in a study session setting, and Alternative 4.e: If Council decides to further pursue liaisons, Council shall consider holding a meeting of chairs to contribute to the policy guidelines for liaisons.

VOTE: 4 - 2 (Councilmembers Moylan and Whittum dissented)

MOTION: Councilmember Whittum moved and Councilmember Lee seconded the motion to approve Alternative 4.g: Council shall consider providing public audio or video recordings, webcasts, or podcasts of all commission meetings when it becomes financially and technologically feasible to do so.

VOTE: 4 - 2 (Councilmember Spitaleri and Vice Mayor Griffith dissented)

MOTION: Councilmember Whittum moved and Mayor Hamilton seconded the motion to approve Alternative 4.f: Staff shall support a public, online e-notify mechanism for all board and commission agendas.

VOTE: 6 - 0

12. MOTION Board and Commission Appointments
RTC 11-201

City Clerk Kathleen Franco Simmons facilitated the appointments process.

Arts Commission (1 vacancy) – One term to 6/30/2015

Shawnte Santos

VOTE: 6 - 0

Wendy Springer

VOTE: 3 - 0 (Councilmember Spitaleri, Vice Mayor Griffith, and Mayor Hamilton abstained)

City Clerk Kathleen Franco Simmons announced Shawnte Santos has been appointed to the Arts Commission for a term expiring June 30, 2015.

Housing and Human Services Commission (1 vacancy) – One term to 6/30/2013

Patti Evans

VOTE: 6 - 0

City Clerk Kathleen Franco Simmons announced Patti Evans has been appointed to the Housing and Human Services Commission for a term expiring June 30, 2013.

COUNCILMEMBER REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE ASSIGNMENTS

Vice Mayor Griffith reported a meeting of the Valley Transportation Authority Policy Advisory Committee in which one of the items voted on was express lanes on highways.

Mayor Hamilton reported a Tri-City meeting of Sunnyvale Leadership Group with Sunnyvale, Santa Clara and Milpitas in which a number of issues of mutual interest were discussed. Hamilton stated it was suggested that State elected officials be invited to participate in future meetings.

Councilmember Lee provided a report of the Santa Clara County Cities Association Legislative Action Committee regarding a speed limit proposal and stated he would provide the report and an update to Council at a future date.

NON-AGENDA ITEMS & COMMENTS

None.

INFORMATION ONLY REPORTS/ITEMS

- Tentative Council Meeting Agenda Calendar
- Study Session Summary of July 26, 2011 – Joint Study Session with Planning Commission and City Council on Lawrence Station Area Plan 1
- Study Session Summary of August 23, 2011 – Board and Commission Interviews
- Draft Minutes from the Arts Commission Meeting of August 17, 2011

ADJOURNMENT

Mayor Hamilton adjourned the meeting at 11:19 p.m.