

DRAFT MINUTES*
SUNNYVALE CITY COUNCIL
TUESDAY, MARCH 20, 2012

CALL TO ORDER

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

SALUTE TO THE FLAG

Mayor Spitaleri led the salute to the flag.

ROLL CALL

PRESENT:

Mayor Anthony (Tony) Spitaleri
Vice Mayor David Whittum
Councilmember Christopher Moylan
Councilmember Jim Griffith
Councilmember Pat Meyering
Councilmember Tara Martin-Milius
Councilmember Jim Davis

ABSENT:

None.

STAFF PRESENT:

City Manager Gary Luebbers
Assistant City Manager Robert Walker
City Attorney David Kahn
Director of Finance Grace Leung
Chief of Public Safety Frank Grgurina
Director of Community Development Hanson Hom
Director of Public Works Kent Steffens
Director of Library and Community Services Lisa Rosenblum
City Clerk Kathleen Franco Simmons

CLOSED SESSION REPORT FOR MARCH 20, 2012

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

Vice Mayor Whittum reported Council met in closed session regarding *Conference with Labor Negotiator*; no action was taken, no direction was given.

SPECIAL ORDER OF THE DAY – Mayor Spitaleri presented a proclamation for Arbor Day to Leonard Dunn, Street Tree Services Program Manager.

SPECIAL ORDER OF THE DAY – Mayor Spitaleri presented a proclamation for National Library Week to Director of Library and Community Services Lisa Rosenblum.

PUBLIC ANNOUNCEMENTS

Councilmember Martin-Milius announced an upcoming community meeting to discuss the proposed El Camino Real Bus Rapid Transit project.

Councilmember Martin-Milius announced recruitment and application deadline for upcoming openings on Boards and Commissions.

Former Mayor and Councilmember Melinda Hamilton announced the new Centennial Library Cards in recognition of the celebration of Sunnyvale's Centennial August 25-26, 2012 and provided information regarding the Centennial Parade.

CONSENT CALENDAR

Councilmember Meyering pulled Item 1.E and 1.G from the Consent Calendar.

MOTION: Vice Mayor Whittum moved and Councilmember Meyering seconded the motion to approve the Consent Calendar, with the exception of Items 1.E and 1.G.

VOTE: 7 - 0

1.A. MOTION Approval of Council Meeting Minutes of March 6, 2012

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 12-075 Nos. 597 & 598

Staff Recommendation: Review the lists of bills.

1.D. MOTION Approval of Budget Modification No. 27 to Appropriate \$20,000 for Land
RTC 12-068 Acquisition Due-Diligence

Staff Recommendation: Alternative 1: Approve a capital project in the amount of \$20,000 for City's due diligence tasks associated with land acquisition, and approve Budget Modification No. 27 to transfer \$20,000 from the Park Dedication Fund.

1.E. MOTION Approval of First Amendment to the Trust Agreement between the City of
RTC 12-073 Sunnyvale, PFM Asset Management, LLC, and U.S. Bank National
Association for the Sunnyvale Post-Employment Welfare Benefits
Program

MOTION: Vice Mayor Whittum moved and Councilmember Griffith seconded the motion to approve the amendment to the Trust Agreement and authorize the City Manager to sign it.

VOTE: 7 - 0

- 1.F. MOTION Conditional Approval to Convert Bridge Loan of \$2.1 Million to MidPen
RTC 12-069 Housing to Permanent Loan for Rehabilitation of Garland Apartments

Staff Recommendation: Conditionally approve conversion of the bridge loan to a 55-year residual receipts loan.

Personnel

- 1.G. RESOLUTION Adoption of the City of Sunnyvale's Communication Officers Association
RTC 12-078 (COA) Memorandum of Understanding Extension, and Amendment to the
Salary Resolution

Councilmember Meyering requested his statements of reasons of dissent be included in the minutes which include: the average, entry-level salary for a dispatch position that does not require a bachelor's degree is \$94,863, with average benefits of approximately \$34,000, or close to a total of \$129,000; compensation agreements with these employees was previously based on a salary survey, and a number of the cities in the group have reduced their salaries up to 15%; instead of going by the salary survey amount, we are going to freeze wages at last year's level, whereas if we had continued with the same process as before, we would be reducing wages; it doesn't make sense to freeze the salaries at 10.3% above average when we've cut services to residents, cut street paving and sidewalk repairs, closed the library two nights a week, and have over 15 vacant police officer positions.

Public hearing opened at 7:35 p.m.

Speakers:

Larry Alba stated objections to members of the City Council voting on labor contracts when they've received campaign contributions from the labor unions due to the conflict of interest. He spoke regarding the importance of balancing the budget and providing for services such as waste and sewage disposal, Library maintenance, and tree-trimming.

Tap Merrick suggested the salary survey average should be based upon the number of people per city, times each city's salary to come up with a weighted average, and spoke in opposition to giving a 9.5% increase on top of that average. He expressed comments regarding the practice of hiring "the best of the best" and recommended promoting and hiring from within.

George Dorrance spoke in reference to a letter he received regarding dispatchers' average base salaries, and expressed opposition to giving them 10% more than the average while freezing salaries for three years and paying for it by increasing property taxes.

Steve Hoffman stated he is the writer of the letter and corrected a statement that was made regarding the Council raising property taxes. He submitted a packet of almost 100 emails which he stated he received in response to the letter today. He presented information relating to dispatcher job descriptions and a report from the U.S. Department of Labor, Bureau of Labor Statistics on employment and wage estimates for San Jose, Sunnyvale and Santa Clara comparing average salaries for detectives and criminal investigators.

Sandy Pacheca recommended decreasing employee salaries and providing more attention to sidewalk repairs, public safety, emergency sewer response, the condition of City Hall and public service.

Andy Frazer, Sunnyvale Pension Reform group, provided information regarding employee pension contribution rates and recommended employees be required to pay the full CalPERS employee contribution of 8%.

Melody Masaniai spoke in support of public safety in Sunnyvale and the quality of public safety employees.

Public hearing closed at 8:04 p.m.

MOTION: Vice Mayor Whittum moved and Councilmember Meyering seconded the motion to defer this matter to closed session for further discussion of the terms.

VOTE: 2 - 5 (Councilmember Griffith, Mayor Spitaleri, Councilmembers Moylan, Martin-Milius, and Davis dissented)
Motion failed.

MOTION: Councilmember Moylan moved and Councilmember Davis seconded the motion to approve Alternative 1: Adopt the City of Sunnyvale's Communication Officer Association Memorandum of Understanding Extension, and Amendment to the Salary Resolution.

VOTE: 5 - 2 (Councilmember Meyering and Vice Mayor Whittum dissented)

- 1.H. RESOLUTIONS Amendment to the Salary Resolution and Classification Plan to Add the
RTC 12-077 Newly-Established Classification of Principal Accountant.

Staff Recommendation: Alternative 1: Adopt resolutions to amend the City's Classification Plan and Salary Resolution to include the newly-established classification of Principal Accountant that will become effective the beginning of the first pay period after March 20, 2012.

Contracts

- 1.I. MOTION Award of Contract for Annual Maintenance of the 911 Computer Aided
RTC 12-070 Dispatch (CAD) and Report Management System (RMS) Hardware
(F1102-49)

Staff Recommendation: Award a contract in the amount of \$111,802, including taxes, to Tiburon, Inc. for annual maintenance for the 911 Computer Aided Dispatch (CAD) and Report Management system.

Other Items

- 1.J. MOTION Annual Review of City's Code of Ethics and Conduct for Elected and
RTC 12-067 Appointed Officials

Staff Recommendation: Alternative 1: Review and approve the 2012 Code of Ethics and Conduct for Elected and Appointed Officials with no changes.

PUBLIC COMMENTS

Tap Merrick spoke regarding comments he has made relating to previous city managers and Council members, and expressed concerns regarding pension expenses, long-term obligations and employee compensation.

Michael Goldman provided information regarding the CalPERS pension system and actuarial cost analysis, and suggested CalPERS' analysis is not reliable in the long-term.

PUBLIC HEARINGS/GENERAL BUSINESS

2. MOTION Approval of License Agreement Between Lifetime Tennis, Incorporated
RTC 12-076 and the City of Sunnyvale for the Operations and Management of the
 Sunnyvale Tennis Center

Superintendent of Parks Scott Morton presented the staff report.

Public hearing opened at 8:34 p.m.

Speakers:

Jeff Ainscow, President of the Sunnyvale Tennis Club, read a letter on behalf of the Club in support of the contract between the City and Lifetime Tennis.

Robert Pochowski, Chair of the Parks and Recreation Commission, stated the Commission voted 5-0 in favor of the agreement with Lifetime Tennis, the reasons being: there was very strong support from the Sunnyvale Tennis Club, which is the second largest tennis club in the United States; Lifetime Tennis has a proven track record, are a credible supplier and are successful in Cupertino and other areas in the Bay Area; and staff did an admirable job with the structure of the contract and developed a good result for the City in terms of capital improvement.

Ralph Kenton, Vice President of the Sunnyvale Tennis Club, provided information regarding the large number of USTA teams in Sunnyvale, home court team matches and tournaments. He spoke in favor of Lifetime Tennis and urged approval of the license agreement.

Public hearing closed at 8:41 p.m.

MOTION: Councilmember Griffith moved and Councilmember Davis seconded the motion to approve Alternative 1: Approve the proposed License Agreement between Lifetime Tennis, Incorporated and the City of Sunnyvale for the Operation and Management of the Sunnyvale Tennis Center.

VOTE: 7 – 0

3. ORDINANCE Proposed Amendments to SMC Chapter 9.28 Regulation of Smoking-to
RTC 12-072 Include a Ban on Smoking in Parks and in Outdoor Dining Areas

Neighborhood Preservation Manager Christy Gunvalsen presented the staff report.

Public hearing opened at 8:58 p.m.

Speakers:

Vanessa Marvin, American Lung Association, urged a yes vote on smoke-free parks and outdoor dining buffer areas policies and provided information regarding studies which have found it is not the case that dining facilities lose business after smoking bans.

Veenu King, member of CATT, a youth coalition focused on preventing youth access to tobacco, provided information regarding six park clean-up events in San Jose, Milpitas, and Sunnyvale and urged a smoke-free park policy.

Larry Alba spoke regarding instances during which he and his young son encountered cigar smoke at a City park and smoking outside retail businesses, and urged application of the smoking ban to other retail businesses.

Jenny Redding spoke regarding the problem of exposure to second-hand smoke at Ponderosa Park.

Christine Veitch spoke regarding smoking at Fair Oaks Park and spoke regarding the serious impact of cigarette smoking on her daughter who has asthma.

Aidan Mackey, co-owner of Murphy's Law Irish Pub and Restaurant, stated he agrees with the prohibition of smoking at public parks, but stated a ban would be difficult on his business and other bars and restaurants in Sunnyvale.

Tap Merrick spoke regarding the impacts smoking has had on members of his family and recommended additional methods of reducing smoking, including: increase taxes on cigarettes, increase each year the age of people allowed to buy cigarettes, fines for giving children cigarettes, impose a statewide fine on the TV and movie industry for each instance showing cigarette smoking, and increase the distances from movie theater entrances where kids hang out.

Graciela Martinez, member of CATT, spoke regarding the collection of cigarette butts in parks and indicated she collected 75 signatures of high school students on a petition and received 125 support letters.

Janie Burkhart, Public Health Department, provided information regarding the tobacco prevention programs.

Heather Veitch spoke in favor of smoke-free parks and restaurants and provided information regarding the impact of cigarette smoke on her sister who suffers asthma.

Nicole Kim, owner of the restaurant, bar and banquet facilities at the Sunnyvale Sunken Gardens Golf Course, spoke in opposition to the smoking ban. She stated they do not allow customers to smoke during food service times, and they provide places for smokers away

from others. She stated she will lose considerable revenue, will lose banquet business, employees will lose tips and the City will lose revenues. Ms. Kim requested that if the ordinance is passed, to consider designating certain areas and times that they can smoke.

Peter Cirigliano stated he is not a smoker but he feels the proposal is not based on good medical evidence and provided information regarding studies on second-hand smoke. He expressed concerns regarding the further restriction of freedoms.

Des Nolan, co-owner of Fibbar MaGee's Irish Pub and Restaurant on Murphy Avenue, stated if the ban is imposed, business will be lost to other cities, and suggested the ban would not eliminate parking lot and curb smoking. He recommended looking at several options, including: designated smoking areas when smoking would and would not be allowed, ventilation systems, and enclosed areas separate from the general public walking by.

Susan Walker, owner of Brandon's on Murphy Avenue, spoke in opposition to the outdoor smoking ban and asked consideration of the policy to be delayed.

Carol Baker, honorary life member of American Cancer Society, provided written materials regarding second-hand smoke in parks and outdoor dining, and provided information on an economic study of a similar ban in Beverly Hills.

Jim Neal submitted a petition and other written materials. He stated 70% of the people who work in businesses that allow outdoor smoking are smokers and provided additional information regarding people's choices to smoke. Neal stated public property can be made smoke-free but private property should be left to the private business owners to decide for themselves.

Catherine Haines, Breathe California, provided information regarding children and others who are susceptible to second-hand smoke and the damage it does.

Bob Powchowski, Chair of the Parks and Recreation Commission, stated the Commission voted 4 - 1 in favor of passage of the ordinance and stated the Commission's reasons included: concerns were around second-hand smoke and the affects it has on children.

Joel Wyrick, President of Sunnyvale Downtown Association, stated a majority of the Association support the ban relating to outdoor dining, but indicated it would impact other retail businesses on Murphy Avenue that do not have outdoor dining. He requested a closer look be taken at how it pertains specifically to Murphy Avenue. He spoke in opposition to applying the ban to public golf courses.

Patricia Brown spoke regarding the impact on her and her family due to the smoking-related death of her husband and spoke in support of the smoking ban.

Robert Kiehl, co-owner of Murphy's Law, spoke in opposition to the ordinance, submitted written materials, and requested the City Council to postpone action on this proposal until a comprehensive environmental and economic impact study can be done.

Public hearing closed at 10:07 p.m.

MOTION: Councilmember Davis moved to send the report back to staff for further considerations on some of the areas talked about.
Motion died for lack of a second.

MOTION: Vice Mayor Whittum moved and Councilmember Griffith seconded the motion to express the sense of Council that they support the regulation of smoking, to prohibit smoking in public parks.

FRIENDLY AMENDMENT: Councilmember Martin-Milius offered a friendly amendment to split the question to consider public parks separate from golf courses.
Vice Mayor Whittum accepted the friendly amendment to consider the regulation to prohibit smoking in public parks, with the exception of golf courses.
Councilmember Griffith accepted the friendly amendment.

VOTE: 6 - 1 (Councilmember Moylan dissented)

MOTION: Vice Mayor Whittum moved and Councilmember Griffith seconded the motion to express the sense of Council to adopt the regulation of smoking, to prohibit smoking on golf courses.

VOTE: 2 - 4 - 1 (Mayor Spitaleri and Councilmembers Moylan, Martin-Milius, Davis dissented, Councilmember Meyering abstained)
Motion failed.

MOTION: Vice Mayor Whittum moved and Councilmember Moylan seconded the motion to express the sense of Council to support the regulation of smoking, to prohibit smoking in any location on public property where smoking is not otherwise prohibited by law may be designated by the city manager as a "no smoking" area. Such areas shall be posted with appropriate signage.

MOTION RESTATED: Vice Mayor Whittum restated the motion that it is the sense of Council to adopt the regulation of smoking, to prohibit smoking in any location on public property where smoking is not otherwise prohibited by law as may be designated by the city manager as a "no smoking" area. Such areas shall be posted with appropriate signage. Staff should research the legal aspects of the ordinance prior to presenting it to Council for approval.

VOTE: 5 – 2 (Councilmembers Meyering and Davis dissented)

MOTION: Vice Mayor Whittum moved and Councilmember Griffith seconded the motion that it is the sense of Council that they would like staff to further research the regulation of smoking, to prohibit smoking in outdoor dining areas, to look at specific aspects as may be added by other Councilmembers, including: consider specifying permitting times of use for outdoor patio areas, that could be used at certain times for dining and other times as posted not for dining. Vice Mayor Whittum added the research would include public input from the businesses affected.

VOTE: 3 – 4 (Mayor Spitaleri, Councilmembers Moylan, Martin-Milius, and Davis dissented)
Motion failed.

MOTION: Councilmember Griffith moved and Councilmember Moylan seconded the motion to include in Alternative 1's actions, direction to staff to include Alternative 2: Amend and simplify sections of Chapter 9.28 – Regulation of Smoking, because most of the language has been superseded by or is duplicative of state law.

VOTE: 6 – 1 (Councilmember Meyering dissented)

4. MOTION 2010-7090 - Creation of a Citizen Advisory Committee (CAC) for the
RTC 12-052 Lawrence Station Area Plan

Director of Community Development Hanson Hom presented the staff report.

Public hearing opened at 10:45 p.m.

No speakers.

Public hearing closed at 10:45 p.m.

MOTION: Councilmember Meyering moved to establish a Citizens Advisory Committee but not have these parameters about so many members of other, existing commissions; the purpose is to establish a broad reach and understanding of the community's interests and concerns about this type of super-dense development; the motion is to set up a Citizen Advisory Committee with obvious parameters of having so many people from the already-existing Planning Commission and to have a Citizen Advisory Commission set up by each Councilmember selecting one individual from the community and the Mayor and Vice Mayor select members from the community.

Motion died for lack of a second.

MOTION: Vice Mayor Whittum moved to set the Citizen Advisory Committee much as we do for a commission, where we accept applications, evaluate them, interview them, and then vote on the membership for the committee.

Motion died for lack of a second.

MOTION: Councilmember Moylan moved and Councilmember Griffith seconded the motion that Council appoints a sub-committee with three members as in Alternative 2. Appoint a Council sub-committee of three City Council members to select the advisory committee; and that committee appoints a Citizens Advisory Group as per the breakdown on page 4 (RTC 12-052) to make sure that each of those key constituents is represented on this critical land-use committee, or essentially Alternative 1: Authorize a Citizen Advisory Group to act in an advisory capacity on Phase 2 of LSAP, and assist in community outreach efforts. The committee would consist of up to 9 members representing City boards and commissions, residents and businesses, primarily from within the study area.

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

Councilmembers Moylan and Griffith, and Vice Mayor Whittum volunteered to serve on the Council Subcommittee.

By acclamation, Councilmembers Moylan and Griffith, and Vice Mayor Whittum were accepted to serve on the Council Subcommittee.

5. MOTION Council Subcommittee Recommendations Regarding the Community
Event Grant and Neighborhood Grant Distribution Process

Councilmember Martin-Milius reported the Subcommittee held a special meeting to address Councilmember Griffith's concerns about the dues-paying groups that might apply for the block grants. She reported the decision was made to leave the process as is and to decide on a case by case basis.

No action was taken.

6. MOTION Discussion and Possible Action Regarding AB 1648, Modifying the
RTC 12-074 Political Reform Act of 1974

Public hearing opened at 10:55 p.m.

Speakers:

Richard Kolber provided information regarding AB 1648, submitted written materials, and requested Council to endorse the legislation.

Claude Nahum, Vice President of Democratic Club of Sunnyvale, reported the Club has decided to endorse the Act and urged Council to endorse AB 1648.

Public hearing closed at 11:02 p.m.

MOTION: Councilmember Moylan moved and Councilmember Griffith seconded the motion to endorse AB 1648.

VOTE: 7 – 0

COUNCILMEMBER REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE ASSIGNMENTS

Vice Mayor Whittum reported the VTA has shared a draft memorandum of understanding for the high speed rail investment strategy and the document is available for public review.

Councilmember Griffith reported the Cities Association is sponsoring an upcoming event for its members and staff on "Economic Development in Silicon Valley."

Councilmember Griffith reported on a meeting of Bay Area Water Supply Conservation Agency and provided information regarding an effort in San Francisco to pass a measure that would be the first step toward potentially eliminating Hetch Hetchy Dam.

Councilmember Moylan reported he provided a written report on the National League of Cities Conference he attended.

NON-AGENDA ITEMS & COMMENTS

Councilmember Davis reported he attended a production at the Latter Day Saints Church in Los Altos where over seven different congregations had over 200 children gave two hours of great entertainment.

Mayor Spitaleri reported he attended a conference at the Community Center on the continuing and growing need for caregivers for seniors, adults and children with special needs, and veterans.

Vice Mayor Whittum spoke regarding a recent article in the Registry and thanked the City Manager and the City Attorney for the great work they've done.

INFORMATION ONLY REPORTS/ITEMS

- Tentative Council Meeting Agenda Calendar
- RTC 12-066 Board/Commission Resignation (Information Only)
- Draft Minutes of the Arts Commission Meeting of February 15, 2012
- Draft Minutes of the Sustainability Commission Meeting of February 21, 2012
- Draft Minutes of the Heritage Preservation Commission Meeting of March 7, 2012.

ADJOURNMENT

Mayor Spitaleri adjourned the meeting at 11:09 p.m.

Kathleen Franco Simmons
City Clerk

Date