

**APPROVED MINUTES\***  
**SUNNYVALE CITY COUNCIL**  
**TUESDAY, APRIL 3, 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 Human Resources Teri Silva  
City Clerk Kathleen Franco Simmons

**CLOSED SESSION REPORT FOR April 3, 2012**

*Closed Session pursuant to Government Code Section 54956.8 – Conference with Real Property Negotiators*

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

**SPECIAL ORDER OF THE DAY** – Annual Fire Safety Poster Contest Awards

*\*Approved by Council 4/24/2012*

**SPECIAL ORDER OF THE DAY** – Mayor Spitaleri presented a proclamation for National Volunteer Week April 15- 21, 2012.

**PUBLIC ANNOUNCEMENTS**

Councilmember Moylan announced the recruitment and application deadline for upcoming openings on Boards and Commissions.

Councilmember Moylan announced an upcoming community meeting sponsored by the City and the Santa Clara Valley Transportation Authority (VTA) to discuss the proposed El Camino Real Bus Rapid Transit Project.

Councilmember Moylan announced recruitment and application deadline for the Peninsula Corridor Joint Powers Board (Caltrain) for openings on their Citizen Advisory Committee.

Councilmember Moylan announced the upcoming Sunnyvale 2012 Fit & Fun Fair.

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

**PRESENTATION** – Joan Barram, President of the Board of Trustees, Foothill-De Anza Community College District provided a presentation on the Onizuka Project.

**CONSENT CALENDAR**

Councilmember Meyering pulled Item 1.C from the Consent Calendar.

MOTION: Vice Mayor Whittum moved and Councilmember Martin-Milius seconded the motion to approve the Consent Calendar, with the exception of Items 1.C.

VOTE: 7 - 0

- 1.A. MOTION Approval of Council Meeting Minutes of March 20, 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 12-084 Nos. 599 & 600

Councilmember Meyering requested his explanation for dissent on this item be recorded in the minutes relating to three bills for payments over a two week period of approximately \$ 23,000 to outside lawyers. Meyering stated he inquired about getting a copy of the bill and that the City Attorney stated this was for legal work that was done for the City, and was confidential. Meyering stated that he doesn't agree with that because he thinks it leaves the public at a serious disadvantage where the City Council is unable to see what the bills are, that \$23,000 is a substantial amount, and that each Councilmember has an obligation to check how funds are being used.

MOTION: Vice Mayor Whittum moved and Councilmember Davis seconded the motion to approve Item 1.C: Review the lists of bills.

VOTE: 6 - 1 (Councilmember Meyering dissented)

- 1.D. MOTION Budget Modification No. 30 to Appropriate \$27,018 of Emergency  
RTC 12-081 Management Performance Grant Funds from Santa Clara County Office  
of Emergency Services

Staff Recommendation: Approve Budget Modification No. 30 to appropriate \$27,018 of Emergency Management Performance Grant funds from Santa Clara County Office of Emergency Services.

### **Contracts**

- 1.E. MOTION Increase an Existing Contract for the SMaRT Station® Materials Recovery  
RTC 12-080 Facility (MRF) Fines Project (F1103-53)

Staff Recommendation: It is recommended that Council increase the existing contract with CalRecovery Inc. by \$63,000, from \$88,000 to \$151,000.

- 1.F. MOTION Award of Contract for Engineering Design and Construction Support for  
RTC 12-083 Water Line Replacements 2012-13 (#F1111-33)

Staff Recommendation: Award a contract in an amount not-to-exceed \$226,032 to Bellecci & Associates, Inc. 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 \$22,603.

- 1.G. MOTION Award of Contract for Engineering Design and Construction Support  
RTC 12-085 Services for Sewer Line Replacement 2012-13 (F1112-38)

Staff Recommendation: Award a contract in an amount not-to-exceed \$362,729 to West Yost Associates 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 \$36,273.

### **PUBLIC COMMENTS**

Steve Hoffman provided information regarding “Sunnyvale Residents for Fair Government” and provided comments in response to prior statements relating to ratification of a memorandum of understanding. Hoffman additionally requested that Councilmembers who have received contributions from employee unions to not approve union contracts or memorandums of understanding before making the terms public and listening to comments from the public.

Tap Merrick spoke regarding prior public comments relating to raising taxes, the importance of controlling expenses, hiring the ‘best of the best’ for City jobs, and reasons that people choose and stay with jobs.

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

2. MOTION 2011-7502 ARCO/Silicon Valley Fuels: Appeal of a Planning Commission  
RTC 12-065 decision to approve a Special Development Permit to allow the sale of  
beer and wine at an existing ARCO automobile service station  
convenience store located at 1697 S. Wolfe Rd. in a C-1/PD Zoning  
District (APN: 309-51-027)

Director of Community Development Hanson Hom reported the applicant withdrew the request prior to the meeting; no action is required.

3. MOTION Discussion and Possible Action Regarding Governor Brown's Pension  
RTC 12-079 Reform Proposal

Director of Finance Grace Leung presented the staff report.

Public hearing opened at 8:02 p.m.

Speakers:

Andy Frazer, Sunnyvale Pension Reform, spoke regarding employee MOU pension costs and suggested that \$12 million could have been saved last year in total expenditures if employees paid half of their retirement costs.

Michael Goldman distributed written materials and spoke regarding CalPERS' returns on investments over time and unfunded liabilities.

Jim Enloe presented information from a book titled "*Dow 36000*" and spoke in support of the Governor's proposal.

Public hearing closed at 8:11 p.m.

MOTION: Councilmember Moylan moved and Vice Mayor Whittum seconded the motion to endorse Governor Brown's pension reform proposal in its entirety as it reads.

VOTE: 5 - 2 (Mayor Spitaleri and Councilmember Davis dissented)

4. MOTION Recruitment Process for City Attorney and Selection of Interim City  
RTC 12-087 Attorney

Director of Human Resources Teri Silva presented the staff report.

MOTION: Councilmember Martin-Milius moved and Vice Mayor Whittum seconded the motion to use a recruiter selected by staff for the search for City Attorney, as provided in Alternative 1: Approve the recruitment and selection process for the City Attorney and the selection process of the interim City Attorney position.

FRIENDLY AMENDMENT: Vice Mayor Whittum offered a friendly amendment to clarify that the Council subcommittee or panel would be the entire City Council. Councilmember Martin-Milius accepted the amendment.

VOTE: 7 - 0



MOTION: Vice Mayor Whittum moved and Councilmember Moylan seconded the motion to approve the second reading of Ordinance No. 2968-12

City Clerk Kathleen Franco Simmons read the ordinance title.

VOTE: 6 - 1 (Councilmember Meyering dissented)

Councilmember Meyering requested his explanation for dissent be recorded in the minutes; he stated he made a point at the previous meeting about there being a legal problem with the City Council stating to the city manager that he has the authority to implement any smoking bans that the city manager desires. Meyering stated he explained to the city attorney the legal reasoning and identified cases, the most recent one being the one with the line-item veto, had the highest visibility and was a U.S. Supreme Court case. He stated that the city attorney provided a memo which identified a case out of Sacramento, from the Third Appellate District. He stated that typically with a legal issue, legal authority or prior legal cases are cited that are in the same appellate district; Sunnyvale sits in the Sixth Appellate District. Meyering stated the case provided by the city attorney does not address the issue that he raised. He stated there is also a practical problem with a majority of the City Council saying that they don't agree with smoking bans in outdoor eating areas or a buffer, but will allow the city attorney to do that.

7. MOTION                    2012 Board and Commission Master Work Plans  
RTC 12-082

Assistant City Manager Robert Walker presented the staff report.

Public hearing opened at 9:26 p.m.

No speakers.

Public hearing closed at 9:26 p.m.

MOTION: Councilmember Griffith moved and Vice Mayor Whittum seconded the motion to accept the 2012 Board and Commission Master Work Plans with the exception of Housing and Human Services Commission, to move its Code of Ethics review from September to November.

FRIENDLY AMENDMENT: Vice Mayor Whittum offered a friendly amendment to ask staff to consider adding to the Bicycle and Pedestrian Advisory Commission and Parks and Recreation Commission Work Plans presentations regarding the Park Dedication Fee. Councilmember Griffith accepted the amendment.

VOTE: 7 - 0

8. MOTION                    Discussion and Possible Action on Measure A: Santa Clara Unified  
RTC 12-086                    School District May 8, 2012 Special Mail Election

Assistant City Manager Robert Walker presented the staff report.

Public hearing opened at 9:28 p.m.

Speakers:

Tap Merrick encouraged support of the measure.

Glen Hendricks spoke in favor of supporting the measure.

Public hearing closed at 9:32 p.m.

MOTION: Councilmember Davis moved and Councilmember Griffith seconded the motion to take a position to support Santa Clara Unified School District's Measure A.

VOTE: 6 - 1 (Councilmember Meyering dissented)

Councilmember Meyering requested his explanation of dissent be recorded in the minutes; he stated he doesn't think Council should be advocating for political issues that take place outside of its jurisdiction, he thinks it is an abuse of their role as City Councilmembers, and he doesn't think this is part of City business. Meyering stated secondly, there is a practical aspect with regard to how the Council runs the City; the budget is spent by paying employees 10.3% over the average rate for similar positions of employees in other agencies while cutting Library hours, street paving and leaving 15 police officer positions vacant, and people are going to ask what expertise Council brings to the table to advocate for a tax measure regarding a different agency.

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

Councilmember Moylan provided a follow-up report on the Community Outreach meeting on the Grand Boulevard.

Councilmember Meyering provided a report of a recent meeting of the League of California Cities, and provided information regarding programs presented by the U.S. Immigration Service for naturalization services.

Vice Mayor Whittum provided a report of a meeting with representatives from EHC Life Builders, Supervisor Cortese's office and staff regarding the future of the cold weather shelter at the Armory site, and provided information regarding continued funding.

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

Councilmember Davis reported he participated in an internship opportunity at Lucille Packard Children's Hospital.

City Manager Luebbers provided an update on the scheduling of interviews with candidates for interim City Attorney.

Vice Mayor Whittum expressed appreciation to City Attorney David Kahn.

Councilmember Meyering reported he received written materials from the meeting of the League of California Cities and would make it available.

**INFORMATION ONLY REPORTS/ITEMS**

- Tentative Council Meeting Agenda Calendar
- Final Minutes of the Bicycle and Pedestrian Advisory Commission Meeting of February 16, 2012
- Draft Minutes of the Board of Library Trustees Meeting of March 5, 2012
- Draft Minutes of the Special Parks and Recreation Commission Meeting of March 7, 2012
- Draft Minutes of the Bicycle and Pedestrian Advisory Commission Meeting of March 15, 2012

**ADJOURNMENT**

Mayor Spitaleri adjourned the meeting at 9:44 pm.

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Kathleen Franco Simmons  
City Clerk

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Date