

**APPROVED MINUTES\***  
**SUNNYVALE CITY COUNCIL and REDEVELOPMENT SUCCESSOR AGENCY**  
**TUESDAY, APRIL 24, 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  
Director of NOVA Workforce Services Kris Stadelman  
City Clerk Kathleen Franco Simmons

**CLOSED SESSION REPORT FOR APRIL 11, 2012**

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

Vice Mayor Whittum reported Council met in closed session regarding *Public Employee Appointment*; direction was given, action was taken.

**CLOSED SESSION REPORT FOR APRIL 17, 2012**

*Closed Session pursuant to Government Code Section 54956.9(a) – Conference with Legal Counsel- Existing Litigation*

Vice Mayor Whittum reported Council met in closed session regarding *Conference with Legal Counsel- Existing Litigation*; direction was given, action was taken.

**CLOSED SESSION REPORT FOR APRIL 17, 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*; direction was given; no action was taken.

**SPECIAL ORDER OF THE DAY** – Recognition of 2012 Earth Day Poster Contest Winners and Green Business Certification Recipients

**SPECIAL ORDER OF THE DAY** – Mayor Spitaleri presented a proclamation for Fair Housing Month

**PUBLIC ANNOUNCEMENTS**

Councilmember Griffith announced the Columbia Neighborhood Center Grand Reopening Celebration at the Fit and Fun Fair.

Myra Diamond, volunteer producer and boardmember of the Sunnyvale Community Players (SCP), provided information regarding the organization, shows and performances.

Joseph Rosas announced an upcoming candidate forum for State Assembly in District 24.

**CONSENT CALENDAR**

Councilmember Meyering pulled Items 1.C and 1.D, and a member of the public requested to pull Item 1.H from the Consent Calendar.

MOTION: Vice Mayor Whittum moved and Councilmember Griffith seconded the motion to approve the Consent Calendar, with the exception of Item 1.C, 1.D, and 1.H.

Vice Mayor Whittum stated that his vote on the Consent Calendar would not be a vote on Item 1.L as his home is within 500 feet of property listed in Item 1.L.

VOTE: 7 - 0

- 1.A. MOTION Approval of Council Meeting Minutes of April 3, 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 12-105 No. 601, 602 & 603

MOTION: Councilmember Whittum moved and Councilmember Griffith seconded the motion to review the list of bills.

VOTE: 6 - 1 (Councilmember Meyering dissented)

- 1.D. MOTION Approval of Budget Modification No. 32 to Appropriate Housing Mitigation  
RTC 12-094 Funds to MidPen Housing Corporation and Charities Housing  
Development Corporation in Conjunction with Onizuka Air Force Station  
Base Realignment Closure

MOTION: Councilmember Whittum moved and Councilmember Griffith seconded the motion to approve Budget Modification No. 32 and create two new capital projects to facilitate the disbursement of pre-development costs, not to exceed \$50,000 per affordable housing provider, as outlined in the Legally Binding Agreement (LBA)

VOTE: 6 - 1 (Councilmember Meyering dissented)

- 1.E. MOTION City of Sunnyvale Investment Report – 1<sup>st</sup> Quarter 2012  
RTC 12-093

Staff Recommendation: Receive and file the investment report.

- 1.F. MOTION Countywide AB 939 Fee and Household Hazardous Waste Agreements  
RTC 12-095 for FY 2013 through 2015

Staff Recommendation: Alternative 1: Authorize the City Manager to execute both the Agency Agreement for Countywide AB 939 Fee and the Agency Agreement for Countywide Household Hazardous Waste Collection Program (with an augmentation amount of \$204,521 for FY 2012/13 and \$223,465 for FY 2013-2015) and continue to delegate to the City Manager the authority to approve an increase of up to 20% (\$40,904 for FY 2012/13) in the City's augmentation amount. In addition, delegate to the City Manager the authority to approve changes to the augmentation amount during FY 2013/14 and 2014/15 as needed.

**Contracts**

- 1.G. MOTION Award of Bid No. F1102-45 for Serra Park Play Equipment Installation  
RTC 12-092

Staff Recommendation: Alternative 1: Award a contract in the amount of \$149,900, to Breneman, Inc. for the subject project, and authorize the City Manager to execute the contract when all necessary conditions have been met; and 2. Approve a 10% construction contingency in the amount of \$14,990.

- 1.H. MOTION Award of Bid No. F1102-46 for Pavement Rehabilitation/Resurfacing at  
RTC 12-091 Remington Drive

Public comment opened at 7:36 p.m.

Steve Pavlina voiced approval for the project to move forward and provided written materials requesting permission to open the blocked driveway at the eastern end of the cul-de-sac of Cumulus Avenue during construction and for a six month trial period.

MOTION: Councilmember Whittum moved and Councilmember Griffith seconded the motion to approve Alternative 1: Award a contract in the amount of \$432,683, to Interstate Grading & Paving, Inc. for the subject project, and authorize the City Manager to execute the contract when all necessary conditions have been met; and 2: Approve a 10% construction contingency in the amount of \$43,268.

VOTE: 7 - 0

- 1.I. MOTION Award of Contract to Overhaul Power Generation Facility Engines #1 and  
RTC 12-101 #2 and Approval of Budget Modification No. 33 (F1103-52)

Staff Recommendation: Alternative 1: Award a contract in the amount of \$289,926, excluding applicable taxes, to Peterson Power Systems for the overhaul of Power Generation Facility Caterpillar Engines #1 and #2; and 2: Approve a 10% contingency in the amount of \$28,993; and 3. Approve Budget Modification No. 33 to move funding forward for this project.

- 1.J. MOTION Award of Contract for a Recycled Water System Master Plan and  
RTC 12-099 Approval of Budget Modification No. 31 (F1108-10)

Staff Recommendation: Alternative 1: Award a contract in the amount of \$225,000 to HydroScience Engineers, Inc. for the subject project, and authorize the City Manager to execute the contract when all the necessary conditions have been met; and 2: Approve a 15% design contingency in the amount of \$33,750; and 3. Approve Budget Modification No. 31 to provide funding for this project.

- 1.K. RESOLUTION Approval For City To Execute an Amended and Restated  
RTC 12-106 Reimbursement Agreement For 1998 Certificates of Participation

Staff Recommendation: Approve Resolution authorizing the City of Sunnyvale to enter into an Amended and Restated Reimbursement Agreement with the Sunnyvale Successor Agency pursuant to Health and Safety Code Section 34178(a) for the reimbursement of payments, costs and interest on the Certificates of Participation (Parking Facility Refunding) Series 1998A.

### **Other Items**

- 1.L. MOTION Increase Construction Contingency for Project 822710, Mathilda Avenue  
RTC 12-100 Railroad Overpass Improvements

Staff Recommendation: Approve an increase of \$200,000 to the construction contract contingency to allow for completion of the remaining work on this construction project.

- 1.M. ORDINANCE      Adoption of Ordinance No. 2969-12 Amending Section 10.16.090 of Title  
2969-12              10 (Vehicles and Traffic) of the Sunnyvale Municipal Code Relating to  
                                Parking Regulations

Staff Recommendation: Approve the second reading of Ordinance No. 2969-12

**PUBLIC COMMENTS**

Steve Hoffman expressed concerns regarding negotiations with public workers and asked consideration of public input prior to making decisions on agreements with employee groups.

Jim Enloe provided information and written materials regarding CalPERS' unfunded liabilities, the widening gap in returns and the importance of controlling employee pension costs.

**PUBLIC HEARINGS/GENERAL BUSINESS**

2.      ORDINANCE      2011-7829 - Silicon Valley Builders, Inc.: Application on a 0.4 acre site at  
       RTC 12-102              411 and 425 North Fair Oaks and 599 East Taylor Avenue in an R-3  
  (Medium Density Residential) Zoning District. (APNs: 204-38-046 and  
  204-38-047). Rezoning from R-3 to R-3/PD; Special Development Permit  
  to allow the development of eight townhomes; and Vesting Tentative Map  
  for eight townhouse lots and one common lot.

Planning Officer Trudi Ryan presented the staff report.

Public hearing opened at 7:48 p.m.

Applicant Richard Haro Drafting and Planning Inc. representing Silicon Valley Builders provided information regarding the request.

Public hearing closed at 7:50 p.m.

MOTION: Councilmember Moylan moved and Councilmember Whittum seconded the motion to approve Alternative 1: Adopt the Mitigated Negative Declaration and introduce an Ordinance to Rezone 411, 425 N. Fair Oaks Avenue and 599 E. Taylor Avenue from R-3 to R-3/PD and approve the Special Development Permit and Vesting Tentative Map with attached conditions (per Planning Commission action).

City Clerk Kathleen Franco Simmons read the ordinance title.

VOTE: 7 - 0

3.      RESOLUTION      2012-7019- Update to Green Building Program (Residential and Public  
       RTC 12-089              Buildings)

Principal Planner Andrew Miner presented the staff report and recommended an additional requirement not listed in the report, for public facilities to require electric car chargers for 3% of the required parking spaces.

Public hearing opened at 7:58 p.m.

No speakers.

Public hearing closed at 7:58 p.m.

MOTION: Councilmember Moylan moved and Councilmember Martin-Milius seconded the motion to approve Alternative 2: Modify and adopt the Resolution in Attachment A to update the Green Building Tables for Residential Buildings and Public Facilities and, if needed, direct staff to evaluate the potential increased costs and return with a budget modification, with the addition to include the requirement for electric car chargers for public facilities as well as in the residential facilities.

VOTE: 6 - 1 (Councilmember Davis dissented)

4. MOTION                    2011-7906: Application to Initiate a General Plan Amendment to Study a change in the land use designation of six properties located near the 400 block of E. Evelyn Avenue to Residential Very High Density and to expand the boundary of the Downtown Specific Plan.

Councilmember Whittum disclosed that his home is within 500 feet of a portion of the purple area shown on Attachment F, however after consulting with the City Attorney, in his understanding with this item there is no intention of actually changing the property within that area and there is not a conflict.

Councilmember Davis disclosed he has met with the developer in regard to this project.

Councilmember Whittum disclosed he has met with the developer.

Mayor Spitaleri disclosed he met with the developers.

Director of Community Development Hanson Hom presented the staff report.

Applicant Jon Moss with Prometheus Real Estate Group provided information regarding the request.

Public hearing opened at 8:22 p.m.

No speakers.

Public hearing closed at 8:22 p.m.

MOTION: Councilmember Martin-Milius moved and Councilmember Griffith seconded the motion to approve Alternative 1: Initiate General Plan Amendments to study:

- a. Amending the General Plan land use designation for 457-475 E. Evelyn Avenue from Commercial General Business to Residential (up to Very High Density);
- b. Amending a portion of the Downtown Specific Plan Block-4 land use designation to allow higher density (up to 65 dwelling units per acre) for the four parcels within DSP Block-4 at the corner of Bayview Avenue and E. Evelyn Avenue; and,
- c. Amending the boundaries of the Downtown Specific Plan to include properties currently zoned C-3 and C-4 on the north side of Evelyn Avenue, including determining appropriate land use and densities for those properties (see Attachment F).

FRIENDLY AMENDMENT: Councilmember Whittum offered a friendly amendment to direct staff to consider among the other park options expansion and completion of Murphy Park. Councilmember Martin-Milius declined to accept the friendly amendment.

AMENDMENT: Councilmember Whittum moved an amendment to provide the option for staff to look at the closest park to the site, Murphy Park, to consider expanding it. Councilmember Davis seconded the motion. Mayor Spitaleri ruled that based on the City Attorney's opinion that the amendment is beyond the scope of what is on the agenda, the amendment is not appropriate, and removed the amendment from consideration.

Councilmember Meyering requested that his explanation of dissent be included in the minutes. Meyering stated this is privately-owned land by a resident of San Jose who brought the property while it was commercially zoned and the value of the land will jump significantly if the land is re-zoned for the benefit of that one property owner.

VOTE on MAIN MOTION: 3 - 4 (Councilmember Meyering, Vice Mayor Whittum, Councilmembers Moylan and Davis dissented)  
Motion failed.

MOTION: Councilmember Moylan moved and Councilmember Davis seconded the motion to approve Alternative 2: Initiate General Plan Amendments to study as listed in Alternative 1, with modifications to the maximum densities to study, replacing the number of dwelling units of 65 in 1.b. with 48.

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

MOTION: Councilmember Whittum moved that the item be returned at the next meeting, with noticing adequate per the Attorney, to permit a discussion of the park sites.  
Motion died for lack of a second.

MOTION: Councilmember Whittum moved to move on to Item 5.  
Motion was not seconded.

MOTION: Councilmember Martin-Milius moved to expand the Downtown Specific Plan to include the area.  
Motion was not seconded.

MOTION: Councilmember Griffith moved and Councilmember Moylan seconded the motion to approve Alternative 2: Initiate General Plan Amendments to study as listed in Alternative 1. a. b. and c., adding Alternative d.: Direct staff to not only do Alternative b. but to do an additional study of only up to 48 dwelling units, to examine in parallel both the option of 48 units and the proposed option of 65, so two very clear options are presented at the end.

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

5. ORDINANCE      Renewal of Taxicab Franchise to Jasraj Bhatia (FKA Bikram Singh) dba  
RTC 12-096      California Cab Company

Strategic Services Manager Ann Durkes presented the staff report.

Public hearing opened at 9:01 p.m.

Speakers:

Julia Miller representing the applicant, stated she was informed earlier by staff that California Cab Company has paid all fees to current and provided information regarding the applicant's extenuating circumstances for the late payments and efforts to work with staff to resolve all the issues.

Applicant Jasraj Bhatia, also known as Bikram Singh, affirmed he would pay any penalties and stated the cabs were inspected, permits were returned to PD, and he potentially has five permitted drivers.

BP Ram, stated he prepared for the exam but experienced extenuating circumstances due to his wife's illness.

Jesse Singh, speaking on behalf of Sikh Temple San Jose for which he serves as Secretary to the Temple, stated they have a great relationship with California Cab which provides transportation senior/elderly congregation members. Speaking as owner of Madhuban Indian Cuisine restaurant, stated they use California Cab as they have the right amount of staff to handle their calls.

Public hearing closed at 9:23 p.m.

MOTION: Councilmember Whittum moved and Councilmember Moylan seconded the motion to continue this item to the next meeting and direct staff to negotiate conditions such as deposit, probationary period, fee reimbursement under such measures and to return to Council for action.

VOTE: 7 - 0

6. RESOLUTION      Approval of Downtown Sunnyvale Business Improvement District Annual  
RTC 12-104      Report for FY 2011/2012 and Adoption of the Resolution of Intention to  
Reauthorize the Downtown Sunnyvale Business Improvement District for  
FY 2012/2013

Vice Mayor Whittum disclosed his personal residence is within 500 feet of the BID, recused himself and left the room.

Economic Development Manager Connie Verceles presented the staff report.

Joel Wyrick, Executive Director of the Downtown Sunnyvale Business Improvement District, provided additional information regarding the request for matching funds of \$27,000 to pay for office and storage space, staff salaries, events, and marketing Sunnyvale Downtown.

Public hearing opened at 9:54 p.m.

Speakers:

Donna Lang, Owner, Tangerine Gifts and Accessories, spoke in support of the request for funding.

Denise Casey, representing Lunatic Fringe, spoke in support of the request for funding. Joseph Rosas stated he is a fan of the events put on by the association but feels it is disingenuous to use the stadium as the justification for the funding request.

Public hearing closed at 9:59 p.m.

MOTION: Councilmember Griffith moved and Councilmember Moylan seconded the motion to approve Alternative 1: Approve the Fiscal Year 2011/2012 BID Annual Report, adopt the Resolution of Intention, and schedule a public hearing for May 22, 2012 to reauthorize the Business Improvement District for Fiscal Year 2012/2013, and approve Alternative 2: Do not approve the BID's request for matching funds.

VOTE: 3 - 3 - 1 (Councilmembers Meyering, Spitaleri and Davis dissented, Vice Mayor Whittum recused)  
Motion failed.

MOTION: Councilmember Meyering moved and Councilmember Davis seconded the motion to approve the Resolution of Intention to reauthorize the Downtown and make a one-time time contribution of \$10,000.

AMENDMENT: Councilmember Meyering incorporated into the motion to Approve the Fiscal Year 2011/2012 BID Annual Report, and schedule a public hearing for May 22, 2012 to reauthorize the Business Improvement District for Fiscal Year 2012/2013.

VOTE: 5 - 1 - 1 (Councilmember Griffith dissented, Vice Mayor Whittum recused)

Following action on this item, Vice Mayor Whittum returned to the room, took his seat at the dais and was present for the remainder of the meeting.

- 7 MOTION FY 2012/2013 NOVA Workforce Services Expenditure and Revenue  
RTC 12-097 Update and the Impact on Allocated Personnel Positions

Director of NOVA Workforce Services Kris Stadelman presented the staff report.

Public hearing opened at 10:39 p.m.

Speakers:

Nellie Rochon-Ellis, NOVA Career Advisor and member of the SEA bargaining unit, provided background on her employment with NOVA and expressed concerns that she feels it is unfair that she is being released from her duties as a career advisor while there will continue to be casual career advisors doing a similar role.

Kim Le, NOVA Career Advisor, stated she is also one of the individuals affected by the layoff and expressed comments that she feels it is unfair that a higher percentage of front line positions than managers are being laid-off.

Public hearing closed at 10:46 p.m.

MOTION: Councilmember Meyering moved to defer this item for two weeks and direct the director to work with the city manager to contact the six other cities concerning working out a contribution plan.

Motion died for lack of a second.

MOTION: Vice Mayor Whittum moved and Councilmember Moylan seconded the motion to approve Alternative 1: Approve the NOVA Workforce Services staffing reduction as defined in the RTC.

Councilmember Meyering requested his explanation of dissent be recorded in the minutes. Meyering stated the discussion about a grant is a red herring because there are other departments of the city government that receive grants on a regular basis, but when the grants are terminated, the funding is supplemented with the general fund. He stated the Sunnyvale residents need this service because there is a high unemployment rate and this program is designed to help those residents.

VOTE: 6 - 1 (Councilmember Meyering dissented)

8. MOTION Approval of Agreement with Thomas Whitelaw Law Firm for Interim City  
RTC 12-107 Attorney Services

Department of Human Resources Director Teri Silva presented the staff report.

Public hearing opened at 11:04 p.m.

Speakers:

Tap Merrick provided written materials and spoke regarding the proposed salary and the importance of consideration of the quality of moral and ethical values.

Joseph Rosas, spoke regarding the compensation that was paid by Los Gatos.

Public hearing closed at 11:08 p.m.

MOTION: Councilmember Whittum moved and Councilmember Moylan seconded the motion to approve Alternative 1: Approve the contract with Michael Martello of Thomas Whitelaw Law Firm for the services of Interim City Attorney for the City of Sunnyvale.

Councilmember Meyering requested to have his explanation of dissent in the minutes. His statements included that there was no recruitment done, there is no time pressure to rush the appointment, the salary is grossly overpaid, and the type of behavior of the individual is relevant in job recruitment.

VOTE: 6 - 1 (Councilmember Meyering dissented)

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

Vice Mayor Whittum provided information regarding a meeting of the Congestion Management Program and Planning Committee meeting.

Councilmember Griffith provided information regarding a meeting of the Annual Cities Association.

Councilmember Martin-Milius provided information regarding a meeting of the Watershed Committee.

Mayor Spitaleri provided information regarding a meeting of the Association of Bay Area Governments (ABAG).

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

Vice Mayor Whittum provided information regarding priority development areas and bus routes and encouraged consideration of what kind of transit might serve Sunnyvale.

Mayor Spitaleri provided information regarding a ribbon cutting for the new green building at NASA.

Mayor Spitaleri reported he attended an event recognizing two young men on the attainment of Eagle Scout.

Mayor Spitaleri provided information regarding the recent Earth Day events at Full Circle Farm.

Mayor Spitaleri provided information regarding the annual fundraising event by the Peninsula Division.

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

- Tentative Council Meeting Agenda Calendar
- RTC 12-090 Board/Commission Resignation (Information Only)
- RTC 12-103 Opportunity for Council to appeal decisions of the Planning Commission of April 9, 2012 and the Zoning Administrator Hearing of April 11, 2012 (Info Only)
- Approved Minutes of the Sustainability Commission Meeting of March 19, 2012
- Draft Minutes of the Housing and Human Services Commission Meeting of March 28, 2012
- Draft Minutes of the Board of Library Trustees Meeting of April 2, 2012
- Study Session Summary on Review of Council Policy 5.1.3: Human Services, and Discussion of Possible Improvements for April 3, 2012.

### **ADJOURNMENT TO THE REDEVELOPMENT SUCCESSOR AGENCY**

Mayor Spitaleri adjourned to the Redevelopment Successor Agency meeting at 11:25 p.m.

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Kathleen Franco Simmons  
City Clerk

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Date