

APPROVED MINUTES*
SUNNYVALE CITY COUNCIL
TUESDAY, JUNE 19, 2012, 7 P.M.

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
Interim City Attorney Michael Martello
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 JUNE 19, 2012

*Closed Session pursuant to Government Code Section 54956.9(a) and (c) – Conference with
Conference with Legal Counsel – Existing Litigation and Initiation of Litigation*

Vice Mayor Whittum reported no direction was given; no action was taken.

SPECIAL ORDER OF THE DAY – The Tobacco Free Coalition of Santa Clara County and
Community Advocate Teens of Today (CATT) recognized the City of Sunnyvale for leadership

* Approved by Council 6/19/2012

and adoption of critical tobacco free prevention ordinances and smoke-free parks and recreational areas.

SPECIAL ORDER OF THE DAY – Mayor Spitaleri presented a Proclamation for Parks and Recreation Month.

SPECIAL ORDER OF THE DAY – Lt. Tim Ahearn presented a check from the Public Safety Officers Association (PSOA) to Muscular Dystrophy Association (MDA) from the Annual “Fill the Boot” Fundraiser.

PUBLIC ANNOUNCEMENTS

Councilmember Davis announced recruitment and an application deadline for Board and Commission openings.

Garth Williams announced an upcoming dedication ceremony hosted by City of Mountain View for the Stevens Creek Trail Extension.

CONSENT CALENDAR

Councilmember Meyering pulled Item 1.C and a member of the public requested to pull Item 1.E from the Consent Calendar.

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

VOTE: 7 - 0

Mayor Spitaleri announced Items 1.C and 1.E will be handled at the end of the agenda just prior to IGR reports.

- 1.A. MOTION Approval of Council Meeting Minutes of June 12, 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 12-154 No. 611

This item was handled immediately following Item 7.

Councilmember Meyering requested his explanation of dissent be recorded in the minutes. Meyering stated he is not able to vote on approving payment of bills in the amount of \$2.8 million using taxpayer money when his request for the underlying bills are refused. He stated Council has an obligation to spend the time asking questions and that it is a sign of a problem with the operation of City government when that is met with resentment and resistance.

MOTION: Vice Mayor Whittum moved and Councilmember Martin-Milius seconded the motion to approve Item 1.C.: Approve the list of bills.

VOTE: 6 - 1 (Councilmember Meyering dissented)

- 1.D. MOTION Appropriation of \$39,068 of Communities Putting Prevention to Work
RTC 12-157 (CPPW) Grant Funds and Approval of Budget Modification No. 42

Staff Recommendation: Alternative 1: Approve Budget Modification No. 42 to appropriate CPPW Grant Funds in the amount of \$39,068.

- 1.E. MOTION Employee Benefits Contract Renewals – Life/AD&D Insurance, Long Term
RTC 12-146 Disability Insurance, and the Employee Assistance Program

MOTION: Vice Mayor Whittum moved and Councilmember Griffith seconded the motion to approve Alternative 1: Authorize the City Manager or his designee, to enter into a contract with CSAC-EIA for the period of July 1, 2012 – June 30, 2014 for the City's Life/AD&D Insurance and Long Term Disability Insurance. Additionally, authorize the City Manager or his designee, to enter into a contract with CSAC-EIA for the period of July 1, 2012 – June 30, 2015 for the City's EAP benefit. Further, provide the City Manager or his designee, authority to sign future Life Insurance/AD&D, LTD, and EAP contracts.

VOTE: 6 - 1 (Councilmember Meyering dissented)

Following action on this item, the regular order of the agenda was resumed at IGR reports.

- 1.F. MOTION FY 2011/2012 NOVA Workforce Services Department Expenditure Update
RTC 12-149 and Approval of Budget Modification No. 38

Staff Recommendation: Alternative 1: Approve Budget Modification No. 38. This action would bring the budgeted expenditures for NOVA Workforce Services Department into alignment with anticipated expenditures for FY 2011/2012

Contracts

- 1.G. MOTION Award of Contract for Morse Avenue Neighborhood Park Development-
RTC 12-151 Remedial Soil Excavation (F1104-59)

Staff Recommendation: That Council 1) award a contract in the amount of \$719,602 to Evans Brothers, 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 15% construction contingency in the amount of \$107,940.

- 1.H. MOTION Authorization to Amend an Existing Contract for Design Services for the
RTC 12-155 Rehabilitation of Air Flotation Thickeners at the Water Pollution Control
Plant (F1104-60).

Staff Recommendation: Authorize an amendment to an existing contract with RMC Water and Environment for design services for four Air Flotation Thickeners at the Water Pollution Control Plant to increase the total contract value by \$75,400 to a total of \$478,500 for additional design services.

Other Items

- 1.I. MOTION Authorization for the City Manager to Execute a Homestead Road
RTC 12-153 Traffic Signal Maintenance and Operations Agreement Between the
City of Sunnyvale and the City of Cupertino.

Staff Recommendation: Alternative 1: Authorize the City manager to execute an agreement between the City of Sunnyvale and the City of Cupertino regarding the operation and maintenance of traffic signals on Homestead Road.

- 1.J. MOTION Approval of Final Map (Tract No. 10101) – Fifty-One New Single-
RTC 12-152 Family Home Development at 700 Timberpine Avenue by Toll CA VI,
LP

Staff Recommendation: Approve the final map for Tract No. 10101; authorize the Mayor to sign the subdivision agreement upon: developer's signatures, submittal of improvement securities, payment of development fees, and submittal of other documents deemed necessary by the Director of Public Works; direct the City Clerk to sign the City Clerk's Statement and forward the final map for recordation.

- 1.K. MOTION Approval of Various Actions Regarding a Parcel Map for Carmel
RTC 12-147 Partners to Construct a Mixed Use Development at Olsen Way
between Frances Street and Aries Way.

Staff Recommendation: 1) Authorize the Director of Public Works to execute the Subdivision Agreement, the NOTICE OF COVENANT and the MAINTENANCE AGREEMENT, and forward those signed documents for recordation; 2) Authorize the Director of Public Works to sign the Certificate of Abandonment to vacate portions of existing rights-of-way for public street and bus shelter purpose; and 3) Authorize the Director of Public Works and the Director of Community Development to sign the parcel map and forward for recordation, upon Subdivider's execution of all documents listed under item 1, payment of development fees and submittal of other documents deemed necessary by the Director of Public Works.

PUBLIC COMMENTS

Ajit Gokhale, landscape photographer, spoke regarding the business license tax and requested Council to consider developing exemptions from the tax for people who have very small sales, such as less than \$2000, or an exemption for seniors.

Jim Enloe, member of Sunnyvale Pension Reform, provided a presentation regarding Sunnyvale's unfunded liability for the previous twelve years and in the twenty-year plan.

Tap Merrick spoke regarding Item 1.E and expressed concerns regarding giving the city manager authority to sign future contracts. He also spoke regarding the importance of quality education, parks and recreation services to keep kids out of trouble and suggested the solution may not be paying higher police salaries and cutting police staffing.

PUBLIC HEARINGS/GENERAL BUSINESS

2. MOTION Adoption of the FY 2012/2013 Budget, Fee Schedule, and Appropriations
RTC 12-159 Limit

Budget Manager Drew Corbett provided the staff report.

Public hearing opened at 7:33 p.m.

Michael Sabin spoke regarding the unfunded pension liability forecast and urged Council to direct staff to provide the dollar value of the unfunded liability, year by year, and incorporate the liability numbers into the twenty-year plan before approving the budget.

Tap Merrick spoke regarding the business license tax and expressed concerns regarding pension reform, the dollar amounts provided in the forecast due to variable stock market performance, and recommended erring on the conservative side of the unfunded liability.

Public hearing closed at 7:43 p.m.

MOTION: Councilmember Moylan moved and Councilmember Davis seconded the motion to approve Alternative 1: Approve the resolutions to adopt the FY 2012-2013 Budget, Fee Schedule, and Appropriations Limit as presented.

Councilmember Meyering requested his explanation of dissent be recorded in minutes. He stated that his view is that the Council's job is to provide services to the residents and to use the resident's tax money the way the residents want it used. He stated he thinks full tree trimming, sidewalk repair, street repair could be funded by pay cuts to employees.

VOTE: 6 - 1 (Councilmember Meyering dissented)

MOTION: Vice Mayor Whittum moved an amendment to the budget and Councilmember Meyering seconded the motion to remove from the budget the sale of the parcels at Murphy Park.

VOTE: 4 - 3 (Councilmembers Griffith, Moylan, and Martin-Milius dissented)

MOTION: Vice Mayor Whittum moved and Councilmember Meyering seconded the motion to add an additional amount of halftime hours in the senior care case management program allocated out of the \$100,000 discretionary fund.

VOTE: 5 - 2 (Councilmembers Griffith and Moylan dissented)

MOTION: Vice Mayor Whittum moved to allocate a portion of the remaining \$30,000 in the discretionary fund to each Councilmember to propose to allocate to specific projects. Motion died for lack of a second.

3. ORDINANCE Introduce a Bicyclist Anti-Harassment Ordinance – STUDY ISSUE DPW
RTC 12-150 12-01

Transportation and Traffic Manager Jack Witthaus provided the staff report.

Public hearing opened at 8:14 p.m.

James Manidakos, Vice Chair of the Bicycle and Pedestrian Advisory Commission, reported the Commission supports the bicyclist anti-harassment ordinance as it will provide a legal framework whereby bicyclists can get relief if they are harassed. He stated the cities of Los

Angeles, Berkeley and Davis have enacted almost identical ordinances; it sends a signal that Sunnyvale is bicycle-friendly and will educate people as to the danger.

Kevin Jackson stated the type of behavior that is targeted with this ordinance is not a common occurrence but that when it does, there is a lack of recourse that is available. He stated many of these drivers are repeat offenders, so better tools are needed to dissuade them. He stated that in his view, a far more important consideration than the number of lawsuits that result, is the deterrent effect resulting from the message it sends to potentially aggressive drivers. Jackson stated this will work better if widely known and suggested using the City's communication channels to publicize the decision to support cyclist safety.

Cor van de Water spoke regarding experiences he and his wife have had with aggressive drivers and expressed support for the ordinance.

Richard Kolber spoke in support of the anti-harassment ordinance and related experiences he has had with aggressive drivers.

David Jones stated this ordinance would make Sunnyvale a regional leader in awareness of the rights of bicycle vehicle users and spoke to the benefits of bicycling. He stated this ordinance would send a strong message to support not allowing these people to be harassed.

Margaret Okuzumi spoke in support of adoption of the ordinance and recommended publication of the ordinance in the Sunnyvale Sun as an educational tool to let the community know that harassment behavior is not lawful and not tolerated.

Public hearing closed at 8:24 p.m.

MOTION: Vice Mayor Whittum moved and Councilmember Griffith seconded the motion to approve Alternative 1: Introduce an ordinance adopting a bicyclist anti-harassment ordinance, and to encourage the staff to publicize the ordinance.

Councilmember Moylan and Councilmember Meyering sponsored/co-sponsored a study issue about extending protection to pedestrians from cyclists.

City Clerk Kathleen Franco Simmons read the ordinance title.

VOTE: 6 - 1 (Councilmember Davis dissented)

4. MOTION Authorization to Accept a Metropolitan Transportation Commission Grant, RTC 12-143 Award of a Contract for Urban Planning for Phase 2 of the Lawrence Station Area Plan (SAP) and Approval of Budget Modification No. 40 (F1111-32) – *Continued from June 12, 2012*

Director of Community Development Hanson Hom provided the staff report.

Public hearing opened at 8:34 p.m.

No speakers.

Public hearing closed at 8:34 p.m.

MOTION: Councilmember Moylan moved and Councilmember Griffith seconded the motion to approve Alternative 2: Award a contract, in substantially the same form as the attached draft and in the amount of \$349,978 to BMS Design Group to assist the Community Development Department to prepare Phase 2 of the Lawrence Station Area Plan (SAP), and authorize the City Manager to execute the contract when all the necessary conditions have been met.

VOTE: 4 - 3 (Councilmembers Meyering, Whittum and Davis dissented)

5. MOTION 2012-7070 - JP DiNapoli Companies Inc. / Sequoia M & M LLC:
RTC 12-158 Application on a 14.2-acre site located at 505 North Mathilda Avenue in
 an M-S-55% & M-S-70% Zoning District (APN: 165-42-005 - 009).
 Rezone multiple properties from MS-55% FAR and MS-70% FAR to MS-
 100% FAR and to allow an increase in the maximum height to 100 feet in
 MS-100% FAR areas Design Review to allow a 612,072 square foot R&D
 campus consisting of two new six-story office buildings, one new four-
 story building and an existing three story office building with a new five-
 level parking structure resulting in a 99.4% FAR

Director of Community Development Hanson Hom provided the staff report.

Mayor Spitaleri called a recess at 8:54 p.m. to resolve a question of whether a conflict of interest exists for Councilmember Meyering due to the proximity of his residence to the subject property.

Council reconvened at 9:20 p.m. with all Councilmembers present. Mayor Spitaleri called the meeting to order.

Mayor Spitaleri announced there was a question of concern of legal interpretation and asked the City Attorney to respond. Interim City Attorney Michael Martello provided information regarding the appearance of the possibility that the property is within the 500 foot circle of the property of the project and an option to continue the item in order to request a written opinion from the FPPC.

MOTION: Councilmember Meyering moved a continuance of the item.
Motion died for lack of a second.

Councilmember Meyering recused himself based on the City Attorney's advice, left the dais and joined the audience at 9:29 p.m.

Public hearing opened at 9:30 p.m.

Applicant John DiNapoli with the DiNapoli Companies, stated the company believes this will be a transformation of Peery Park to a Class A office environment. He stated they have assembled fourteen acres over the last fourteen years, they have a lot of interest in this project, and have worked very closely with staff to come up with a project the Council can approve.

Project Architect Craig Almeleh with Arc Tec, described the project and provided a PowerPoint presentation.

Dwight Davis expressed concerns regarding the visual and shading impact of a one hundred foot tall building so close to his residence at the corner of West Arbor and Pine. He also expressed concern regarding impacts of the additional traffic and requested the zoning be kept the same.

Pat Meyering addressed the Council as a member of the public and stated he thinks this is a very valuable piece of property for the owner and that if the owners developed it in accordance with the general plan, they would be making a considerable amount of money. He stated that the proposal to raise the height to 103 feet would be comparable to a ten-story building, which would be directly in the flight path toward Moffett Field. Meyering stated that the traffic study indicates there will be 4458 daily vehicle trips and will contribute hundreds of thousands of tons of greenhouse gases to Sunnyvale. He stated Sunnyvale is a community, not a monopoly for developers, and recommended maintaining loyalty to the general plan to control growth and have an orderly community. Meyering stated traffic problems and gridlock on 101, Central Expressway and Mathilda will be exacerbated.

Public hearing closed at 9:47 p.m.

Applicant J.P. DiNapoli stated this is the type of facility technology firms are looking for and there has been interest from international technology firms in locating here. The architect provided information regarding the office building standard of 14.5 feet floor to floor for structural and cabling at a minimum. He provided information regarding building height and shading concerns.

Michelle Hunt, Principal for Hexagon Transportation Consultants, provided additional information regarding the traffic study. She stated the project will generate over 4000 daily trips and a determination was made the impacts are insignificant based on the City's significance criteria, with no need for mitigation. She stated the conditions of approval will address areas where efficiencies could be made. Hunt stated that 65% of the traffic to this site will be taking 101 or 237 and would be focused onto Mathilda Avenue, so the study looked at the intersection along Mathilda Avenue at the freeways and Mathilda site, and determined that there was sufficient capacity.

MOTION: Vice Mayor Whittum moved and Councilmember Davis seconded the motion to approve Alternative 1:

- a. Adopt the Mitigated Negative Declaration
- b. Introduce an Ordinance to amend the zoning code for 505-599 N. Mathilda Ave., 683 W. Maude Ave, and 510 N. Pastoria Ave. from M-S-55% and M-S-70% to M-S-100%,
- c. Modify S.M.C. 19.32.020 related to height for the M-S-100% FAR zoning district to a maximum 100 feet.
- d. Approve the Design Review with the attached conditions (including Planning Commission modifications).
- e. Direct staff to return with zoning code modifications for the Futures intensification sites developed at more than 70% FAR. The amendments should address requirements for:
 - i. Housing Mitigation Fees
 - ii. Transportation Demand Management Requirements
- f. Direct staff to return with Green Building program modifications for the Futures intensification sites developed at more than 70% FAR.
- g. Deduct 194,577 s.f. from the Citywide Development Pool, based on the difference in

floor area allowed under the current zoning and the proposed project. With the addition that this approval is subject to a shading study to be reviewed by staff and if found to be unacceptable, if it shows that there is shading of the residential neighborhood to the east, to be then taken to the Planning Commission for review.

City Clerk Kathleen Franco Simmons read the ordinance titles.

VOTE: 5 - 1 (Councilmember Moylan dissented, Councilmember Meyering recused)

Following action on this item, Councilmember Meyering returned to the dais.

6. MOTION Amend Civil Service Rules and Regulations
RTC 12-140

Human Resources Manager Doug Baker provided the staff report.

Public hearing opened at 10:26 p.m.

No speakers.

Public hearing closed at 10:26 p.m.

MOTION: Vice Mayor Whittum moved and Councilmember Davis seconded the motion to approve Alternative 1: Adopt the amended Civil Service Rules and Regulations as recommended by the Personnel Board.

VOTE: 7 - 0

7. MOTION Adoption of a New Policy on Access to Confidential and Non-Public
Information and Materials. Amendment to Policy 7.3.13 Relative to the
RTC 12-156 Allotment of Staff Time to Requests from Councilmembers

Interim City Attorney Michael Martello provided the staff report.

Public hearing opened at 10:42 p.m.

Tap Merrick spoke regarding a public records request in which he was informed some information could not be disclosed, and stated this policy doesn't address when information goes from confidential to non-confidential to public.

Public hearing closed at 10:45 p.m.

MOTION: Vice Mayor Whittum moved and Councilmember Meyering seconded the motion to refer this document to the Council Subcommittee on Board and Commission Bylaws to edit.

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

MOTION: Councilmember Griffith moved and Councilmember Moylan seconded the motion to approve Alternative 3: Approve the amendment to Policy 7.3.13 and Policy 7.3.25 amended to include the addition of one line to Section 7.3.13, Section A.1. on staff hours, following the red-lined amendment, as follows: "The City Manager can authorize a deviation from this policy if he/she determines that the request needs to be filled before the Council next meets."

FRIENDLY AMENDMENT Vice Mayor Whittum requested to amend the motion to add to Policy 7.3.25, Section 2, the phrase: "or City Council" in two places, to paragraph B, after "City Manager" and paragraph C, after "City Manager". Councilmember Griffith accepted the friendly amendment.

AMENDMENT: Vice Mayor Whittum moved to amend the motion, on Policy 7.3.13, to amend the line stating that "Requests over one hour must be approved by the Council" to insert "or the City Manager" to read: "Requests over one hour must be approved by the Council or the City Manager". Motion to amend died for lack of a second.

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

Councilmember Meyering requested his explanation of dissent be recorded in the minutes. He stated that 7.3.13 unnecessarily injects politics on the City Council because it requires the Council to approve a fellow Councilmember's request for information. Meyering stated there is no need to have a City Council if staff is making a final decision. He stated many times there are questions that are controversial with regard to something the City Manager favors and a Councilmember doesn't favor, and the City Manager is going to say it's going to take more than an hour. He stated that four members of the City Council who want to stay on good terms with the City Manager undermines democracy and effective government and that no information has been cited as to where there is a problem. With regard to policy 7.3.25, he stated the government should not be creating new avenues to lock down information as it sets a bad precedent and is inconsistent with American values.

Following action on Item 7, Council resumed consideration of Consent Calendar Items 1.C and 1.E.

Following action on Items 1.C and 1.E, Council resumed the regular order of the agenda at IGR reports.

COUNCILMEMBER REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE ASSIGNMENTS

Councilmember Griffith provided a report on a recent meeting of the Cities Association and provided information regarding an issue of a study for potentially redistricting school districts.

Mayor Spitaleri provided a report of his attendance at the United States Conference of Mayors.

NON-AGENDA ITEMS & COMMENTS

Vice Mayor Whittum addressed the earlier public comments on business license fees, and commented that if it is labor intensive to look at what the gentleman requested, the Council could ask what the impact would be for a change of \$1 in the fee of a sole proprietor category.

Vice Mayor Whittum commented that the idea of having the gentleman come speak about pensions is a great idea and requested that it be televised and be made accessible on the City website.

Councilmember Griffith sponsored a study issue to look at low revenue businesses and the impact. Councilmember Moylan co-sponsored the study issue.
Councilmember Martin-Milius spoke in support of a study issue and recommended that if the business is a “hobby business” the City may want to have a different criteria.

Councilmember Meyering spoke in support of holding the meeting with the Actuary at a time when it could be interactive to allow residents to attend and ask questions.

INFORMATION ONLY REPORTS/ITEMS

- Tentative Council Meeting Agenda Calendar
- Draft Minutes of the Board of Library Trustees Meeting of May 21, 2012
- Draft Minutes of the Heritage Preservation Commission Meeting on June 7, 2012.
- Draft Minutes of the Sustainability Commission Meeting on May 21, 2012.
- Study Session Summary of June 12, 2012 – NASA proposal

ADJOURN TO THE SUNNYVALE REDEVELOPMENT SUCCESSOR AGENCY

Mayor Spitaleri closed the regular session in honor of the memory of Saverio Pasquale (Pat) Pezzella.

Mayor Spitaleri adjourned to the Redevelopment Successor Agency meeting at 11:09 p.m.