

DRAFT MINUTES*
SUNNYVALE CITY COUNCIL
TUESDAY, JULY 31, 2012, 7 PM

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
City Clerk Kathleen Franco Simmons

CLOSED SESSION REPORT FOR JULY 31, 2012

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

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

PUBLIC ANNOUNCEMENTS

James Lee, representing Occupy Redwood City, announced a town hall meeting in East Palo Alto to protest the building of a new San Mateo County Jail in Redwood City.

**Pending Council approval*

Councilmember Moylan announced an extension of the deadline to submit applications for boards and commissions.

Melinda Hamilton, Centennial Parade Chair, announced the City Centennial Celebration August 25 and 26, 2012.

PRESENTATION – Raania Mohsen, Executive Director, gave an overview of the organization, background and mission of the Cities Association of Santa Clara County.

CONSENT CALENDAR

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

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

VOTE: 7 - 0

Mayor Spitaleri announced Item 1.C. would be heard following the Public Hearing/General Business section of the agenda.

- 1.A. MOTION Approval of Council Meeting Minutes of July 17, 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 12-178 Nos. 616-617

Council heard this item at 9:53 p.m. following the Public Hearing/General Business section of the agenda.

Councilmember Meyering requested his explanation of dissent be recorded in the minutes. Meyering stated he is not able to approve the request for payment of bills when his request for the underlying bills is refused.

MOTION: Vice Mayor Whittum moved and Councilmember Moylan seconded the motion to approve the lists of bills.

VOTE: 6 - 1 (Councilmember Meyering dissented)

Following action on this item, Council resumed the regular order of the agenda at Councilmember Reports on Activities from Intergovernmental Committee Assignments.

- 1.D. MOTION Appropriation of \$6,000 of Satterberg Foundation Grant Funds and
RTC 12-164 Approval of Budget Modification No. 1

Staff Recommendation: Approve Budget Modification No. 1 to appropriate Satterberg Foundation Grant Funds in the amount of \$6,000.

PUBLIC COMMENTS

Tap Merrick spoke regarding unfunded liabilities for pensions and provided information regarding shortcomings in projecting mortality rates.

Joseph Rosas spoke regarding background checks for BMR housing applications and the need for defined guidelines including the elimination of sex offenders, violent criminals and those who have committed crimes such as drug distribution.

Shaunn Cartwright, representing Occupy San Jose, spoke in opposition to background checks for BMR housing applicants and encouraged study of the issue.

Michael Goldman spoke in support of increasing library square footage and branch libraries, and encouraged taking the issue to voters.

Mei-Ling Stefan stated she attended the study session regarding Future Library and Civic Center Facility Options and expressed concern regarding the need for more public outreach.

Mayor Spitaleri announced the remainder of public comment would be taken following the Public Hearing/General Business portion of the agenda.

MOTION: Councilmember Meyering moved and Councilmember Davis seconded the motion to allocate another six minutes to this portion of the agenda to accommodate the two remaining people who want to give public comments.

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

PUBLIC HEARINGS/GENERAL BUSINESS

2. MOTION Personnel Board Appointment
RTC 12-179

Personnel Board
(1 vacancy-Employee Nominated seat)
1 term to 6/30/2016

Michael Knaebel
VOTE: 6 – 0 – 1 (Councilmember Meyering abstained)

Derek Purdy
VOTE: 2 – 0 – 5 (Councilmembers Meyering and Griffith, Mayor Spitaleri and Councilmembers Moylan and Martin-Milius abstained)

Wendy Springer
VOTE: 2 – 0 – 5 (Councilmember Griffith, Vice Mayor Whittum, Mayor Spitaleri and Councilmembers Moylan and Martin-Milius abstained)

City Clerk Kathleen Franco Simmons announced Michael Knaebel has been appointed to the Personnel Board, Employee-nominated seat for a term expiring June 30, 2016.

3. RESOLUTION Adoption of a Resolution to Approve the Annual Engineer's Report and
RTC 12-176 to Levy Annual Assessment for the Downtown Parking Maintenance
District Assessment for Fiscal Year 2012-2013

Vice Mayor Whittum disclosed his property is within 500 feet of the district, and indicated after consultation with the City Attorney, his understanding is that this does not represent a financial conflict.

City Engineer Mark Rogge provided the staff report.

Public hearing opened at 7:49 p.m.

No speakers.

Public hearing closed at 7:49 p.m.

MOTION: Councilmember Moylan moved and Councilmember Griffith seconded the motion to approve Alternative 1: Adopt the resolution to approve the annual Engineer's Report for FY 2012/13 and to direct the Assessment Engineer to forward the assessment to the County of Santa Clara for inclusion on the property tax rolls.

VOTE: 6 – 0 – 1 (Vice Mayor Whittum abstained)

4. ORDINANCE Modifications to the Zoning Code Related to Chapter 19.66: Affordable
RTC 12-182 Housing and Single Room Occupancies (Study Issue CDD 09-12C and
Non-Routine HO-01)

Director of Community Development Hanson Hom provided the staff report.

Public hearing opened at 7:56 p.m.

James Lee, resident of Redwood City, spoke in opposition to two of the proposed modifications.

Marie Bernard, Sunnyvale Community Services, spoke in support of the staff recommendation.

Shaunn Cartwright, representing Occupy San Jose and Peninsula Direct Action, stated people want new housing, not old rebuilt housing.

Joseph Rosas spoke in opposition to the proposed modifications.

Jennifer Simmons, Habitat for Humanity Silicon Valley, spoke in support of the City's efforts for affordable housing.

Public hearing closed at 8:11 p.m.

MOTION: Councilmember Martin-Milius moved and Councilmember Griffith seconded the motion to approve Alternatives 1, 2 and 3:

1. Adopt the ordinance provided in Attachment B to modify the zoning code related to Below Market Rate Housing Requirements and to move the density bonus and single room occupancy subsections from Chapter 19.66 to other chapters of the zoning code.
2. Direct staff to prepare a nexus study to determine the nexus between construction of market-rate rental housing and the demand for affordable rental housing.
3. Direct staff to develop policies and guidelines for Council review to establish criteria for the acceptance of in-lieu fees as an alternative to BMR units.

FRIENDLY AMENDMENT: Councilmember Griffith offered a friendly amendment to revise the ordinance as presented to make the City Council the final arbiter on BMR decisions that are currently destined to go to the Planning Commission.

FRIENDLY AMENDMENT CLARIFIED: Councilmember Griffith clarified the friendly amendment to amend 19.67.090 that the applicant may satisfy the BMR requirements if they go to the Council.

Councilmember Martin-Milius accepted the friendly amendment.

FRIENDLY AMENDMENT: Councilmember Moylan offered a friendly amendment to remove the option listed on page five of the staff report, Goal 2.c. Alternative Housing Types. Councilmember Martin-Milius declined to accept the friendly amendment.

FRIENDLY AMENDMENT: Councilmember Moylan offered a friendly amendment to amend 19.67.060 (f) *Interiors* to replace the paragraph with: "Interiors may be of standard-grade finishes and amenities consistent with the market rate units within the project."
Councilmember Martin-Milius accepted the friendly amendment.

FRIENDLY AMENDMENT: Vice Mayor Whittum recommended rewording of the phrase in 19.67.060 (f) from "Interiors may be" to "Interiors will be" and confirmed that it is the intent of the maker of the motion to amend only section 19.67.090 (a) "Decision-Making Body" to "City Council."

City Clerk Kathleen Franco Simmons read the ordinance title.

VOTE: 7 - 0

5. MOTION Authorization for the Purchase, Training and Deployment of Electro-Muscular Disruption Technology Devices (Tasers®) by Public Safety Employees

Deputy Chief of Public Safety Dayton Pang provided the staff report.

Public hearing opened at 9:08 p.m.

James Lee, resident of Redwood City, spoke against the purchase of Tasers.

Joseph Rosas spoke against the purchase of Tasers.

Shaunn Cartwright spoke against the purchase of Tasers.

Linda Larsen spoke in support of the issuance of Tasers to Public Safety Officers, but stated she is not in support of issuing Tasers to Community Service Officers.
Public hearing closed at 9:20 p.m.

MOTION: Vice Mayor Whittum moved and Councilmember Moylan seconded the motion to approve Alternative 1: Approve the use of Asset Forfeiture and Supplemental Law Enforcement Services funds to purchase and deploy Tasers in the Department of Public Safety; and include that Council would receive an update within one year or so regarding the final policy and some kind of summary of the experience.

FRIENDLY AMENDMENT: Councilmember Griffith offered a friendly amendment to reword it to be one year after Tasers are deployed in the field.
Vice Mayor Whittum accepted the friendly amendment.

Councilmember Meyering requested his explanation of dissent be recorded in the minutes. Meyering stated concerns regarding the Taser being used in situations where lethal force is not justified and stated looking at guidelines is critically important. Meyering stated a Taser should only be used in situations where the person poses a physical threat and that non-compliance would not justify using a Taser. Meyering stated that the analysis that money will be saved by reduction in the cost of officer injuries is flawed in that it doesn't include the cost of damage awards for wrongful death suits. Meyering stated the report does not include an analysis of the liability to the City should there be an unfortunate situation and the suspect passes away. Meyering expressed concerns regarding spending \$240,000 for the purchase of 203 Tasers and stated it would be enough to pay for three new Public Safety Officers which would be a more significant contribution to public safety than Tasers.

VOTE: 6 - 1 (Councilmember Meyering dissented)

MOTION: Councilmember Meyering moved that Council request Public Safety to prepare a report once every six months identifying the number of times in the past six months that a Taser was used in the line of duty, the number of officers who fired the Taser, the age, gender and ethnic group of the person who was tased, as well as a description of the circumstances leading the officer to make the decision and the health condition of the suspect one hour after the tasing incident.
Motion died for lack of second.

PUBLIC COMMENT (continued):

Andy Frazer spoke regarding CalPERS rate of return on investments.

James Lee requested Council not pursue contracts with DMB Associates and Urban Housing Group as, in his opinion, they are not reputable. Lee stated the study requiring background checks for BMR applicants is an assault on fair housing, privacy rights, and equal protection.

Following public comment, Council considered Consent Calendar Item 1.C.

Following action on Item 1.C., Council resumed the regular order of the agenda at Councilmember Reports on Activities from Intergovernmental Committee Assignments.

COUNCILMEMBER REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE ASSIGNMENTS

Councilmember Martin-Milius reported her attendance at a meeting of the Santa Clara Water Commission.

NON-AGENDA ITEMS & COMMENTS

Councilmember Moylan requested a future agenda item to consider a modification to the salary resolution to increase the Councilmember contribution to CalPERS to the full employee contribution of 8%. Mayor Spitaleri agreed to add the item to the next agenda.

Vice Mayor Whittum expressed appreciation for Councilmember Moylan's work on the Patent Office subject.

Vice Mayor Whittum provided information regarding a New Hampshire Statewide fluoride warning law and suggested a similar warning be added to water bills or the annual water report.

Councilmember Griffith requested staff return to the previous operational practice regarding notification of General Plan Amendment requests.

MOTION: Councilmember Meyering moved and Vice Mayor Whittum seconded the motion to put on the agenda at least one month out the discussion of adding a notice to the water bill regarding the impact of fluoride on infants.

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

City Manager Luebbers provided clarification on the process for Council notification of receipt of General Plan Amendment requests.

Vice Mayor Whittum expressed appreciation for Council's receipt of the General Plan Amendment request.

Councilmember Meyering stated his previous request to receive General Plan Amendment requests stands.

INFORMATION ONLY REPORTS/ITEMS

- Tentative Council Meeting Agenda Calendar
- RTC 12-180 Boards and Commissions Semi-Annual Attendance Report, January - June 2012 (Information Only)
- RTC 12-181 Board and Commission Resignation (Information Only)
- RTC 12-177 Follow-up on Conditions of Approval for Palo Alto Medical Foundation (PAMF) Project (Information Only)
- Draft Minutes of the Bicycle and Pedestrian Advisory Commission Meeting of July 19, 2012
- Draft Minutes of the Board of Library Trustees Meeting of July 2, 2012
- Draft Minutes of the Arts Commission Meeting of June 20, 2012
- Draft Minutes of the Parks and Recreation Commission Meeting of June 13, 2012

ADJOURNMENT

Mayor Spitaleri adjourned the meeting at 10:10 p.m.