

DRAFT MINUTES*
SUNNYVALE CITY COUNCIL
TUESDAY, SEPTEMBER 11, 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 SEPTEMBER 11, 2012

Closed Session pursuant to Government Code Section 54957 – Public Employee Performance Evaluation – City Manager

Vice Mayor Whittum reported Council met in closed session regarding Public Employee Performance Evaluation; direction was given and no action was taken.

PUBLIC ANNOUNCEMENTS

Councilmember Meyering announced recruitment and an application deadline for a vacancy on the Planning Commission.

Councilmember Martin-Milius announced an upcoming performance of “Legally Blonde” to be presented by the Sunnyvale Community Players at the Sunnyvale Theatre.

Amy Wright announced an upcoming performance of “Legally Blonde” to be presented by the Sunnyvale Community Players.

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

CONSENT CALENDAR

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

Mayor Spitaleri called for a second to pull the three items.

Councilmember Whittum seconded Items 1.I and 1.K.

No second was made on Item 1.C.

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

VOTE: 6 - 1 (Councilmember Meyering dissented)

Mayor Spitaleri announced the items pulled for discussion would be handled following Public Hearings / General Business.

- 1.A. MOTION Approval of Council Meeting Minutes of August 28, 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 12-216 No. 622-623

Staff Recommendation: Approve the lists of bills.

- 1.D. MOTION Investment and Cash Management Policy Review and Adoption for Fiscal
RTC 12-211 Year 2012/13

Staff Recommendation: Alternative 1: Adopt the Investment Policy for FY 2012/13 as presented.

- 1.E. MOTION Approval of Sewer System Management Plan (SSMP)
RTC 12-208

Staff Recommendation: Alternative 1: Approve the Sewer System Management Plan as submitted in Attachment A.

- 1.F. MOTION Approval of Budget Modification No. 12 to Re-Appropriate Utility Capital
RTC 12-220 and Infrastructure Funds to Meet Immediate Needs and Ensure the Timely
Expenditure of Proceeds from the 2010 Water and Wastewater Revenue
Bonds

Staff Recommendation: Alternative 1: Adopt Budget Modification No. 12 to re-appropriate utility capital and infrastructure funds to meet immediate needs and insure the timely expenditure of proceeds from the 2010 bonds.

Contracts

- 1.G. MOTION Award of Bid No. PW13-02 for Replacement/Rehabilitation of Sanitary
RTC 12-210 Manholes 2012

Staff Recommendation: Award a contract in the amount of \$144,535, to Norcal Pipeline, 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% construction contingency in the amount of \$14,454.

- 1.H. MOTION Award of Contract for Engineering Design and Construction Support
RTC 12-219 Services for Sewer Line Replacement 2012-13 Phase 2 (F1106-74)

Staff Recommendation: Award a contract in an amount not-to-exceed \$472,111 to Hatch Mott MacDonald 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 \$47,211.

- 1.I. MOTION Award of Contingency for Urban Planning for Phase 2 of the Lawrence
RTC 12-212 Station Area Plan (SAP) #F13-05

Public hearing opened at 11:42 p.m.

Tap Merrick spoke regarding Items 1.I and I.K. Merrick spoke regarding the increase in Sunnyvale population and suggested making future housing more homeowner based and assigning a public safety fee to pay a portion of fire and police costs.

Public hearing closed at 11:45 p.m.

MOTION: Vice Mayor Whittum moved and Councilmember Moylan seconded the motion to approve Consent Calendar Items 1.I and 1.K.

Staff Recommendation: Authorize adding a 10% project contingency in an amount not-to-exceed \$35,000 to the BMS Design Group contract for Urban Planning for Phase 2 of the Lawrence Station Area Plan (SAP).

VOTE: 7 - 0

- 1.J. MOTION Rejection of Proposals Received in Response to Request for Proposals
RTC 12-209 No. F1103-54 for Water Pollution Control Plant Program Management

Staff Recommendation: Reject the three proposals received in response to RFP No. F1103-54.

Other Items

- 1.K. MOTION Approval of Final Map (Tract No. 10053) – Eight Unit Townhome
RTC 12-213 Development at 425 North Fair Oaks Avenue by Silicon Valley
Builders, LLC

Staff Recommendation: Approve the final map for Tract No. 10053; authorize the Mayor to sign the subdivision agreement upon submittal of improvement securities, 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.

Action on his item was handled with Item 1.I, and passed on a 7 – 0 vote.

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

PUBLIC COMMENTS

Michael Goldman spoke regarding the proposal to sell or lease the Civic Center property for a new Library and presented a PowerPoint presentation.

Marvin Bertelson spoke regarding damage to his sewer line due to City tree roots and requested the trees in front of his home be replaced.

Andy Frazer spoke regarding disappointment in AB 340.

Tap Merrick requested follow up information regarding the Murphy Park properties issue discussed at the last Council meeting.

PUBLIC HEARINGS/GENERAL BUSINESS

2. MOTION Board and Commission Appointments
RTC 12-218

Councilmember Griffith reported a recommendation was made to the Mayor to refer the issue of ranked-choice paper votes back to the Council Subcommittee for further discussion.

The Mayor announced the traditional voting method would be used for the evening's appointments and the ranked-choice method would be referred back to the Subcommittee.

Board of Building Code Appeals (5 vacancies)
2 terms to 6/30/2016
2 terms to 6/30/2015
1 term to 6/30/2013

Sachihiko (Mike) Michitaka
VOTE: 7 - 0

City Clerk Kathleen Franco Simmons announced Sachihiko (Mike) Michitaka has been appointed to the Board of Building Code Appeals for a term expiring June 30, 2016.

Bicycle and Pedestrian Advisory Commission (2 vacancies – Category 1)
1 term to 6/30/2015
1 term to 6/30/2014

John Cordes
VOTE: 4 – 0 – 3 (Councilmembers Meyering, Griffith and Martin-Milius abstained)

Kimberly Hubble
VOTE: 3 – 0 – 4 (Councilmembers Meyering, Whittum, Moylan and Davis abstained)

David Jones
VOTE: 4 – 0 – 3 (Councilmembers Meyering, Griffith and Spitaleri abstained)

Sachihiko (Mike) Michitaka
VOTE: 2 – 0 – 5 (Councilmembers Griffith, Spitaleri, Moylan, Martin-Milius and Davis abstained)

Kyle Welch
VOTE: 5 – 0 – 2 (Councilmembers Moylan and Martin-Milius abstained)

MOTION: Councilmember Griffith moved and Councilmember Meyering seconded the motion to appoint Kyle Welch to the term expiring June 30, 2015 and vote again to break the tie between John Cordes and David Jones.

VOTE: 7 - 0

TIE-BREAKER

John Cordes
VOTE: 3 – 0 – 4 (Councilmember Griffith, Vice Mayor Whittum and Councilmembers Martin-Milius and Davis abstained)

David Jones
VOTE: 4 – 0 – 3 (Councilmember Meyering, Mayor Spitaleri and Councilmember Moylan abstained)

City Clerk Kathleen Franco Simmons announced Kyle Welch has been appointed to the Bicycle and Pedestrian Advisory Commission, Category One for a term expiring June 30, 2015 and David Jones has been appointed to the Bicycle and Pedestrian Advisory Commission, Category One for a term expiring June 30, 2014.

Board of Library Trustees (1 vacancy)
1 term to 6/30/2016

Daniel Bremond
VOTE: 7 - 0

City Clerk Kathleen Franco Simmons announced Daniel Bremond has been appointed to the Board of Library Trustees for a term expiring June 30, 2016.

Heritage Preservation Commission (1 vacancy)
1 term to 6/30/2016

Sachihiko (Mike) Michitaka
VOTE: 4 – 0 – 3 (Councilmember Meyering, Mayor Spitaleri and Councilmember Martin-Milius abstained)

Suzanne Moshier
VOTE: 4 – 0 – 3 (Councilmembers Griffith, Moylan and Davis abstained)

MOTION: Councilmember Moylan moved and Vice Mayor Whittum seconded the motion to hold a vote to break the tie and require that each Councilmember only vote for one person.

VOTE: 7 – 0

TIE-BREAKER

Sachihiko (Mike) Michitaka
VOTE: 4 – 0 – 3 (Councilmember Meyering, Mayor Spitaleri and Councilmember Martin-Milius abstained)

Suzanne Moshier
VOTE: 3 – 0 – 4 (Councilmember Griffith, Vice Mayor Whittum, Councilmembers Moylan and Davis abstained)

City Clerk Kathleen Franco Simmons announced Sachihiko (Mike) Michitaka has been appointed to the Heritage Preservation Commission for a term expiring June 30, 2016.

Housing and Human Services Commission (1 vacancy)
1 term to 6/30/2013

Diana Gilbert
VOTE: 7 - 0

City Clerk Kathleen Franco Simmons announced Diana Gilbert has been appointed to the Housing and Human Services Commission for a term expiring June 30, 2013.

**Sustainability Commission (1 vacancy – Category 1)
1 term to 6/30/2013**

John Cordes

VOTE: 3 – 0 – 4 (Councilmember Meyering, Councilmember Griffith, Mayor Spitaleri and Councilmember Martin-Milius abstained)

Andy Frazer

VOTE: 4 – 0 – 3 (Councilmembers Griffith, Moylan and Martin-Milius abstained)

Nancy Jackson

VOTE: 3 – 0 – 4 (Councilmember Meyering, Mayor Spitaleri and Councilmembers Moylan and Davis abstained)

James Lauth

VOTE: 2 – 0 – 5 (Councilmember Meyering, Councilmember Griffith, Mayor Spitaleri and Councilmembers Martin-Milius and Davis abstained)

City Clerk Kathleen Franco Simmons announced Andy Frazer has been appointed to the Sustainability Commission for a term expiring June 30, 2013.

3. MOTION Consideration of Pastoria Avenue Street Space Allocation Study
RTC 12-217

Traffic and Transportation Manager Jack Witthaus provided the staff report.

Public hearing opened at 8:19 p.m.

Chip Sotir spoke in opposition to Option 1.

Kevin Jackson, BPAC member, presented the minority opinion of the commission, and spoke in favor of Option 1.

Arthur Schwartz stated Pastoria is the only arterial street that goes through to El Camino and urged Council to approve Option 1.

Kimberly Hubble spoke in favor of bike lanes on Pastoria and spoke in favor of Option 1.

Tess Chu expressed concerns regarding parking on Pastoria and spoke in favor of Option 2 or 4.

Dan Hafeman spoke in opposition to Option 1 and recommended applying the funding to bike lane improvements on Mary Avenue. Hafeman suggested moving the bike lanes to Sunset Avenue or making Pastoria Avenue and Waverley one-way streets.

Patrick Grant spoke in opposition to Option 1 due to access to the Washington Park swimming pool and backing hazards in that area.

Monica Davis spoke in support of turning Charles Street into a cul-de-sac and expressed concern regarding the safety of pedestrians and cyclists on Charles.

Tap Merrick spoke regarding potential parking problems on Charles Street and bicycle lanes on Mary Avenue.

Steve Caroompas stated if Option 1 is approved, Council should consider the danger to cyclists from traffic from Denny's and a four-way stop at McKinley and Charles.

Mike Strange expressed concerns regarding parking issues on Pastoria and spoke regarding drivers exceeding the speed limit on Pastoria.

Mil Matzinger spoke in support of Option 1 and expressed concerns regarding Option 4.

Public hearing closed at 8:50 p.m.

MOTION: Vice Mayor Whittum moved and Councilmember Moylan seconded the motion to approve Alternatives 1 and 2: 1) Direct staff to implement Option 4 to allocate street space on Pastoria Avenue between El Camino Real and Olive Avenue by removing a southbound right turn lane and providing bike lanes; allocate street space on Pastoria Avenue between Olive Avenue and Sutter Avenue by reconfiguring existing roadway features to provide bike lanes; allocate street space on Olive Avenue between Pastoria Avenue and Charles Street by removing parking on one side of the street and providing bike lanes; and allocate street space on Charles Street between Olive Avenue and Evelyn Avenue in order to retain one auto lane in each direction, parking on both sides of the street and provide a bicycle boulevard treatment; and, 2) Direct staff to pursue outside grant funding sources for a Pastoria Avenue Bicycle Boulevard project to augment the loss of BAAQMD revenues because bike lanes will not be installed.

AMENDMENT: Vice Mayor Whittum amended the wording of Alternative 1 to change the word "implement" to "pursue."
Councilmember Moylan accepted the amendment.

VOTE: 6 - 1 (Councilmember Meyering dissented)

Councilmember Meyering requested his explanation of dissent be recorded in the minutes. He stated Olive is choked with parking and Charles is not a good alternative when there is a 33 foot strip on Mathilda where legitimate bicycle lanes can be placed. Meyering stated the proposal for a one block long bike lane is not a good use of staff time or a good reflection of the values of Sunnyvale residents.

4. MOTION 2012-7045: Appeal of a decision by the Planning Commission Denying a
RTC 12-198 Use Permit for a Large Family Day Care within 300 feet of another Large
Family Day Care Located at 1372 Cordilleras Avenue

Planning Officer Trudi Ryan provided the staff report.

The applicant was allowed to speak at 9:21 p.m.

Cecile Coignoux spoke on behalf of the applicant and provided information about the day care operations.

Public hearing opened at 9:29 p.m.

Bill Dwyer spoke in opposition to the request and stated there is a lot of noise and there is no oversight or regulations by the City to control the noise, and stated a taller fence would not help the issue.

Barbara Dwyer provided information regarding numerous other daycares in the neighborhood and expressed concern about noise, speeding and parking issues.

Karl Gross spoke in opposition to making an exception for this day care and expressed concerns regarding traffic issues.

Gustav Larsson, Chair of the Planning Commission, reported the commission voted 4 – 3 to deny the permit and stated the commissioners who voted to deny it felt there was an overconcentration of large family day cares in the neighborhood, noise concerns, and an insufficient plan for parking. Larsson stated the three commissioners who voted in the minority did not feel there was an overconcentration of family day cares, did not feel the noise issue rose to the level of denying the permit, and felt it was a straight zoning issue.

Cynthia Markiewicz spoke in opposition to a large daycare in a residential neighborhood.

Deborah Beebe stated the applicant is respectful and quiet on her side, with a tall hedge barrier but expressed concerns regarding the noise impact to the direct neighbors.

Grant Jasmin provided information from Chet Hee who submitted photographs earlier. Jasmin stated he is the resident next door being asked to pay for half the cost of the fence and spoke in opposition to approval of the use permit due to traffic impacts, parking impacts, noise, litter, and public safety. He asked the existing law be applied and the decision of the Planning Commission be upheld.

Michael Barton spoke regarding the dangers to children due to the lack of sidewalks in the neighborhood and spoke in opposition to approval.

Jay Keller stated he signed a petition in opposition to this as there are already two large daycares in the neighborhood. He expressed concerns regarding noise and traffic and stated the street is not appropriate for commercial use.

Valerie Jackson expressed concerns regarding noise, traffic and litter and requested a vote against the appeal.

Patrick Grant stated Cordilleras has no sidewalks due to a court agreement with the City when the area was annexed. He expressed concerns regarding the safety of pedestrians and bicyclists with the higher density traffic. Grant recommended putting aside the appeal and rethinking the policy.

Holly Trapp spoke in opposition to the large daycare.

Cecile Coignoux spoke on behalf of the applicant and responded to questions and concerns raised. She stated the applicant is open to conditions that may be required.

Public hearing closed at 10:25 p.m.

MOTION: Vice Mayor Whittum moved and Councilmember Moylan seconded the motion to grant the appeal and approve the Use Permit with conditions listed in Attachment B and additional modified conditions: 9 a.m. be the earliest hour for outdoor activities, a maximum of 2 hours of outdoor activities during day, use permit valid for one year, and a review at one year by the Planning Commission based on complaints received.

Councilmember Moylan requested to add a condition that the garage be used for parking the owner's family car or an employee's car.

City Attorney Martello provided language: the use permit is granted subject to a one year review by the Planning Commission to review complaints to see whether the use shall continue or be further conditioned.

Vice Mayor Whittum amended the motion to reflect the language provided by the City Attorney and clarified that the cost of the 8 foot fence be borne by the applicant.

Councilmember Moylan proposed a study issue regarding how to make it easier for people to deal with an unreasonable amount of noise from a day care; whether the 300 foot limit is appropriate; whether there should be a maximum number of day cares within one area; and whether the entitlement for a property owner to run an in-home day care should be amended or limited if the home does not have sidewalks.

Councilmember Meyering asked his explanation of dissent be recorded in the minutes. He stated approving this appeal will show disrespect to residents. Meyering stated residents should write down the names of the Councilmembers who vote for this because there is no method to address complaints about the issues. He stated this is an effort to have profit without going to the expense that a typical business owner in Sunnyvale has to go to with respect to operating their enterprise and the burden is being shifted to the neighbors of the business.

City Attorney Martello suggested that the one year review period begin once the day care has 10 or more children and as part of the review process the day care would be required to show records of attendance and receipts to show they had achieved that number so that the use can be evaluated.

Vice Mayor Whittum amended the motion to reflect the language provided by the City Attorney.

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

Vice Mayor Whittum requested staff look into the conditions of the use permit of the day care with the 11 foot playground structure and that staff look into traffic on Cordilleras and what measures can be considered.

Mayor Spitaleri co-sponsored the study issue proposed by Councilmember Moylan.

5. ORDINANCE Introduction of an Ordinance to Amend Certain Sections of Title 5
RTC 12-214 (Business Licenses and Regulations) of the Sunnyvale Municipal Code
Pertaining to Taxicabs

Chief of Public Safety Frank Grgurina provided the staff report.

Public hearing opened at 11:11 p.m.

Amarjit Singh stated several issues which they had requested are not included, such as: making the permit valid for at least two years instead of one; pro-rating the permit; and the two year waiting period after suspension of a franchise and driver is too harsh. Singh suggested the City look at what the other cities are doing with regard to fees.

Jasraj Bhatia requested staff look into the taxi meters which are certified every year; certification from San Mateo County is not accepted by Public Safety but the standards are the same.

Jatinder Kumar stated one year is too short for a permit and requested a two or four year permit. Kumar requested the driver be cited for lack of permit, not the company.

Larry Silva, President and General Manager of Yellow Checker Cab, spoke in support of the ordinance.

Public hearing closed at 11:26 p.m.

MOTION: Councilmember Davis moved and Councilmember Moylan seconded the motion to approve Alternative 1: Introduce an ordinance to amend certain sections of Title 5 (Business Licenses and Regulations) of the Sunnyvale Municipal Code Pertaining to Taxicabs.

City Clerk Kathleen Franco Simmons read the ordinance title.

VOTE: 7 - 0

6. ORDINANCE Introduction of an Ordinance to Amend Certain Sections of Title 10
RTC 12-207 (Vehicles and Traffic) of the Sunnyvale Municipal Code Pertaining to
Bicycle Licensing

Chief of Public Safety Frank Grgurina provided the staff report.

Public hearing opened at 11:39 p.m.

No speakers.

Public hearing closed at 11:39 p.m.

MOTION: Councilmember Griffith moved and Councilmember Davis seconded the motion to approve Alternative 1: Introduce an ordinance repealing SMC sections 10.56.020 thru 10.56.110.

City Clerk Kathleen Franco Simmons read the ordinance title.

VOTE: 7 - 0

Following action on Item 6, Council took up and considered Consent Calendar Items 1.I. and 1.K.

Following action on Item 1.K., 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 Davis reported he attended the League of California Cities Conference.

Councilmember Martin-Milius reported she attended the League of California Cities Conference.

Councilmember Moylan reported he attended the League of California Cities Conference and attended sessions on food trucks and due process.

Councilmember Meyering reported he attended the League of California Cities Conference.

NON-AGENDA ITEMS & COMMENTS

Councilmember Meyering inquired about a legal letter.

INFORMATION ONLY REPORTS/ITEMS

- Tentative Council Meeting Agenda Calendar
- RTC 12-215 Board/Commission Resignation (Information Only)
- Memo to Council: U.S. Patent and Trademark Regional Office Update
- Study Session Summary of August 14, 2012 – Board and Commission Interviews
- Study Session Summary of August 28, 2012 – Board and Commission Interviews
- Draft Minutes of the Arts Commission meeting of August 15, 2012
- Draft Minutes of the Parks and Recreation Commission meeting of August 8, 2012

ADJOURNMENT

Mayor Spitaleri closed the meeting in honor of the 3,000 people who lost their lives and those who sacrificed their lives to assist others on September 11, 2001.

Mayor Spitaleri adjourned the meeting at 11:54 p.m.