

**DRAFT MINUTES\***  
**SUNNYVALE CITY COUNCIL**  
**TUESDAY, DECEMBER 18, 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 Joan Borger  
Director of Finance Grace Leung  
Director of Public Safety Frank Grgurina  
Deputy Chief of Public Safety Jim Bouziane  
Director of Community Development Hanson Hom  
Director of Public Works Kent Steffens  
Director of Human Resources Teri Silva  
Director of Environmental Services John Stufflebean  
Planning Officer Trudi Ryan  
City Clerk Kathleen Franco Simmons

**CLOSED SESSION REPORT FOR DECEMBER 18, 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; no direction was given, no action was taken.

*\*Pending Council Approval*

**PUBLIC ANNOUNCEMENTS**

Tap Merrick made an announcement regarding his candidacy for City Council.

**PRESENTATION** – Marian Lee, Director of Caltrain Modernization Program, provided a presentation regarding the Caltrain/High Speed Rail Blended System.

**CONSENT CALENDAR**

Councilmember Meyering pulled Item 1.C and Item 1.L and requested a No vote be recorded on Items 1.J and 1.K.

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.L.

VOTE: 7 - 0

- 1.A. MOTION Approval of Council Meeting Minutes of December 4, 2012
- 1.B. MOTION Approval of Information/Action Items – Council Directions to Staff

**Fiscal Items**

- 1.C. RTC 12-305 List of Claims and Bills Approved for Payment by the City Manager – List Nos. 636 and 637

Council took up consideration of this item following the Public Hearing / General Business portion of the meeting.

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

VOTE: 6 - 1 (Councilmember Meyering dissented)

- 1.D. RTC 12-283 Receive and File FY 2011/2012 Annual Status Report on Receipt and Use of Development Impact Fees

Staff Recommendation: Alternative 1: Receive and file the FY 2011/2012 Annual Status Report on Receipt and Use of Development Impact Fees.

- 1.E. RTC 12-296 Revenue Agreement with County of Santa Clara for a Tenant-Based Rental Assistance Program for Homeless and At-Risk Individuals and Families

Staff Recommendation: Approve the Draft Agreement with the County of Santa Clara for implementation of the Tenant Based Rental Assistance Program.

**Contracts**

- 1.F. RTC 12-295 Award of Contract for a Cold Milling Machine for Street Patching and Other Repairs (F13-24)

Staff Recommendation: Award a contract in the amount of \$136,360 to RGW Equipment for one cold milling machine.

- 1.G. RTC 12-303 Approval to Amend an Existing Contract for Construction Management Services for the Mathilda Avenue Overhead Bridge Rehabilitation Project (F13-30)

Staff Recommendation: Amend an existing contract to HNTB Corporation for construction management services for the Mathilda Avenue Overhead Bridge Rehabilitation Project to increase the contract value by \$112,500 from \$3,039,425 to \$3,151,925; extend the time for performance to March 31, 2013; and increase the contract contingency by \$2,500, from \$50,000 to \$52,500.

- 1.H. RTC 12-302 Award of Contract for Routine Disposal and Emergency Cleanup of Hazardous Materials (F1106-69)

Staff Recommendation: Award a three-year contract to Advanced Chemical Transport of Sunnyvale, in an amount not to exceed \$220,000, for the routine and emergency disposal of hazardous wastes; and authorize the City Manager to renew the contract for two additional years if pricing and service remain acceptable to the City.

- 1.I. RTC 12-300 Award of Contract for the Lease of Multi-Function Copiers (F13-03)

Staff Recommendation: Award a contract, not to exceed budgeted amounts, to Caltronics Business Systems and; delegate authority to the City Manager to renew the contract for an additional one-year period, provided pricing and service remain acceptable to the City.

**Other Items**

- 1.J. ORDINANCE 2984-12 Adopt Ordinance 2984-12 Amending the Precise Zoning Plan, Zoning Districts Map, to Rezone Certain Properties Located at 636 West Fremont Avenue from R-1 and R-2/Pd (Low Density Residential and Low-Medium Density Residential/Planned Development) to R-0/Pd and R-2/Pd (Low Density Residential/Planned Development and Low-Medium Density Residential/Planned Development) Zoning Districts

MOTION: Vice Mayor Whittum moved and Councilmember Moylan seconded the motion to adopt Ordinance 2984-12.

VOTE: 6 - 1 (Councilmember Meyering dissented)

- 1.K. ORDINANCE Adopt Ordinance 2985-12 to Amend Chapter 9.56 of the Sunnyvale  
2985-12 Municipal Code Relating to Solicitation

MOTION: Vice Mayor Whittum moved and Councilmember Moylan seconded the motion to adopt Ordinance 2985-12.

VOTE: 6 - 1 (Councilmember Meyering dissented)

- 1.L. RTC 12-299 Approval of Final Map (Tract No. 10143) – Five Unit Townhome  
Development at 127 West California Avenue by Payman Townhomes,  
LLC

MOTION: Vice Mayor Whittum moved and Councilmember Moylan seconded the motion to approve the final map for Tract No. 10143; authorize the Mayor to sign the subdivision agreement upon: 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.

VOTE: 6 - 1 (Councilmember Meyering dissented)

### **PUBLIC COMMENTS**

Robert LaMarche proposed a study issue regarding a landscape maintenance agreement with the County for the portion of Central Expressway that goes through Sunnyvale. Councilmember Whittum sponsored it as a study issue or budget issue. City Manager Luebbers stated it would be considered a budget issue.

Michael Goldman spoke regarding the Civic Center and provided a PowerPoint presentation.

Stefani Pineda requested Council sponsor a study issue to explore mobile home rent control.

Peggy Kitting requested Council sponsor a study issue on rent control in mobile home parks and asked that the study issue be ranked top priority.

Mayor Spitaleri sponsored a study issue to look at maintaining low income housing stock without the use of rent control.

Councilmember Meyering co-sponsored the study issue.

Shani Kleinhaus, Santa Clara Valley Audubon Society, requested Council sponsor a study issue regarding the types of designs that can be implemented in new construction to decrease the risk of bird collision with windows. Kleinhaus also requested Council sponsor a study issue to improve the habitat for burrowing owls in open spaces without conflict with current land uses.

Vice Mayor Whittum sponsored the study issue proposed by Ms. Kleinhaus.

Councilmember Martin-Milius co-sponsored the study issue.

Steve Hoffman made an announcement regarding his candidacy for the 2013 Council election and spoke regarding his request for Councilmembers to recuse themselves when they have received campaign contributions from developers.

Arthur Schwartz expressed appreciation to the Department of Public Works for their work on Hollenbeck and spoke in support of the high speed rail and electrification of Caltrain and stated he would like to see the stations level with the floors of the train, as it is in subways.

**PUBLIC HEARINGS/GENERAL BUSINESS**

2. RTC 12-297 Discussion and Possible Action to Adopt Sunnyvale Employees' Association (SEA) Memorandum of Understanding 2012-2015 and Approve Budget Modification No. 27

Director of Human Resources Teri Silva provided the staff report.

Public hearing opened at 7:51 p.m.

Steve Hoffman spoke regarding campaign contributions from unions and requested members who have received contributions recuse themselves from voting.

Public hearing closed at 7:55 p.m.

MOTION: Councilmember Moylan moved and Councilmember Martin-Milius seconded the motion to adopt the Memorandum of Understanding with the Sunnyvale Employees' Association and approve Budget Modification No. 27.

VOTE: 6 - 1 (Councilmember Meyering dissented)

3. RTC 12-306 Introduction and Adoption of an Emergency Ordinance to Amend the CalPERS Contract to Provide 20475 (Different Level of Benefits) and Section 21353 (2% @ 60 Full Formula)

Council took up consideration of this item following Item 4.

Director of Human Resources Teri Silva provided the staff report.

Public hearing opened at 8 p.m.

No speakers.

Public hearing closed at 8 p.m.

MOTION: Councilmember Griffith moved and Councilmember Moylan seconded the motion to Adopt an Emergency Ordinance to Amend the CalPERS Contract to Provide 20475 (Different Level of Benefits) and Section 21353 (2% @ 60 Full formula Single Highest Year calculation) applicable to local miscellaneous members entering membership for the first time in the miscellaneous classification after the effective date of this contract amendment.

City Clerk Kathleen Franco Simmons read the ordinance title.

VOTE: 7 - 0

Following action on this item, Council resumed the regular order of the agenda at Item 5.

4. RTC 12-301 Discussion and Possible Action to Amend the Schedule of Pay of the Salary Resolution for Pay Plan Category C (Public Safety Sworn Positions)

Council considered this item following Item 2.

Director of Human Resources Teri Silva provided the staff report.

Public hearing opened at 8 p.m.

No speakers.

Public hearing closed at 8 p.m.

MOTION: Councilmember Moylan moved and Vice Mayor Whittum seconded the motion to amend Pay Plan Category C of the Schedule of Pay of the Salary Resolution to reflect the new pay rates, effective retroactive to July 8, 2012.

VOTE: 7 - 0

Following action on this item, Council took up and considered Item 3.

5. RTC 12-293 Discussion and Possible Action Regarding a Ban of the Use of Expanded Polystyrene (EPS) Food Containers (Study Issue)

Council took up consideration of this item following Item 3.

Director of Environmental Service John Stufflebean provided the staff report.

Public hearing opened at 8:24 p.m.

Allison Chan, on behalf of Save the Bay, urged support for moving forward with an ordinance.

Anisha Jagannathan, on behalf of Homestead High School Anti-Styrofoam Initiative, provided information regarding costs and alternatives to EPS.

Laura Kasa, Executive Director of Save our Shores, provided information regarding the success of the complete ban of EPS on the coast and offered assistance.

Micaela Salacup provided information regarding adverse health effects linked to food foam containers and urged a ban.

John Cordes urged support of banning the use of polystyrene food containers and in support of the Sustainability Commission recommendation to ban the sale of polystyrene.

Steve Terrin, on behalf of Sierra Club, spoke in support of a ban on expanded polystyrene containers in Sunnyvale.

Diane Gleason spoke in support of a ban on polystyrene and Sunnyvale being a leader in banning retail sales.

Cyril Millendez, student at Homestead High School, provided information regarding adverse health effects linked to polystyrene.

Rachel Poyer, student at Homestead High School, spoke regarding alternatives to polystyrene.

Robert Schmitt provided photographs of trash in Baylands Park.

Miriam Gordon, California Director for Clean Water Action, spoke in support of an expanded polystyrene ban.

Bruce Wolfe, Executive Officer, Regional Water Quality Control Board, spoke in support of the staff recommendation and a reduction in the amount of trash produced.

Barbara Fukumoto spoke regarding the toxicity of food foam on humans and wildlife, and spoke in support of the staff recommendation.

Kim Jelfs spoke in support of an EPS ban.

Dan Hafeman spoke regarding the difficulty of picking up EPS particles and urged approval of the staff recommendation.

Shani Kleinhaus, Santa Clara Valley Audubon Society, urged support of the ban.

Amit Srivastava spoke in support of the staff recommendation.

Public hearing closed at 9:03 p.m.

**MOTION:** Councilmember Griffith moved and Councilmember Davis seconded the motion to approve the first four bullets of Alternative 1: Direct staff to prepare an ordinance modifying Chapter 8.18 of the Municipal Code to:

- Make unlawful the use of expanded polystyrene (EPS) food containers, including beverage containers, by food vendors
- Exempt from the ban the use of polystyrene for pre-packaged foods sold in retail stores (e.g. pre-packaged meats and eggs) and non-food businesses that use polystyrene for packaging
- Include a process by which food vendors may request an exemption of up to one year if a unique circumstance would cause the food vendor undue hardship
- Have these changes take effect no sooner than six months after second reading of the ordinance; and

Include in the initial study any effort that would need to be done to also at some point expand the ban to include retail sale of food EPS containers.

**VOTE:** 7 - 0

MOTION: Councilmember Griffith moved and Councilmember Davis seconded the motion to approve the final bullet of Alternative 1: In keeping with Sustainability Commission recommendations, include a ban, within two years of adoption, of all retail sales of EPS food containers, and add to direct staff to conduct outreach to the businesses that will be directly affected to identify any potential issues not yet identified and encouraging them to revisit the item and/or reconsider it should they find something that hadn't been considered before.

FRIENDLY AMENDMENT: Councilmember Martin-Milius offered a friendly amendment to include looking at supply chain issues including food storage containers and packaging. Councilmember Griffith declined to accept the friendly amendment.

VOTE: 7 - 0

MOTION: Councilmember Moylan moved to direct staff to come back with options to remove EPS completely from our waste stream within two years.  
Motion died for lack of a second.

MOTION: Vice Mayor Whittum moved to ask staff to come back with a budgetary item regarding the cost to support extensive volunteer cleanups for all of the drainage systems in the City.  
Motion died for lack of a second.

6. RTC 12-298      Receive and File the FY 2011/12 Budgetary Year-End Financial Report, Comprehensive Annual Financial Report, and Sunnyvale Financing Authority Financial Report; and Discussion and Potential Action for General Fund Savings and Budget Modification No. 23

Budget Manager Drew Corbett provided the staff report.

Public hearing opened at 9:36 p.m.

Andy Frazer, representing Sunnyvale Pension Reform, spoke regarding retiree health benefits.

Public hearing closed at 9:37 p.m.

MOTION: Vice Mayor Whittum moved and Councilmember Griffith seconded the motion to approve Alternatives 1 and 2: 1) Receive and file the budgetary Year-End Financial Report, the audited Comprehensive Annual Financial Report, the Memorandum on Internal Control and Required Communications issued by the independent auditors, and the Sunnyvale Financing Authority Financial Report and 2) Approve Budget Modification No. 23 to appropriate \$1 million from the General Fund to make an additional contribution to the City's OPEB Trust.

VOTE: 6 - 1 (Councilmember Meyering dissented)

7. RTC 12-304 2012-7113 Discussion and Possible Action to Introduce an Ordinance to Amend Title 5 (Business Licenses and Regulations) and Title 19 (Zoning) Regarding Food Truck Location and Operation Requirements (Study Issue)

Director of Community Services Hanson Hom provided the staff report.

Vice Mayor Whittum disclosed his residence is within 500 feet of block 2 on the map but that his understanding is the discussion has nothing to do with any change to it and submitted page 3 of the executive summary of the Downtown Specific Plan.

Public hearing opened at 10:06 p.m.

Dan Hugo, Acting Director of the Bay Area Mobile Food Vendors Association, provided information regarding the proposed limit of three vendors per property.

Kurt Vartan provided information and recommendations regarding the regulation of food trucks.

Public hearing closed at 10:28 p.m.

MOTION: Vice Mayor Whittum moved and Councilmember Moylan seconded the motion to approve Alternatives 1 and 3:

1) Introduce the proposed ordinance which:

- Establishes mobile vending operational standards for public streets and private property relating to public safety. These standards include: required distances from hydrants and driveways, fire lanes, crosswalks, etc.; hours of operation; maintenance of trash receptacles and cleanliness of surrounding area; and, prohibition of amplified speech or music;
- Requires display or provision of proof, upon request, of licenses and permits from other agencies such as Santa Clara County Department of Environmental Health, which ensures food safety and sanitation.
- Allows food trucks to operate on the public street and private property under specified conditions (hours of operation, duration, number of trucks per location, etc.);
- Establishes a permitting process for requests to operate on private property that exceed specified conditions;
- Establishes provisions that allow the City to take action if mobile vendor sales: create a public nuisance; are located, operated or maintained in a manner that impedes vehicular and pedestrian circulation; or creates a hazard to life or property; and
- Consolidates the City's regulations on all types of vending, and

3) Adopt the resolution rescinding the Mobile Vendor Clean-up Deposit fee.

City Clerk Kathleen Franco Simmons read the ordinance title.

VOTE: 7 - 0

Mayor Spitaleri called a recess at 10:47 p.m.

Council reconvened at 10:54 p.m. with all Councilmembers present.

8. RTC 12-294 2012-7114 Discussion and Possible Action to Introduce an Ordinance to Amend Title 19 (Zoning) Regarding Non-Residential Parking Requirements (Study Issue)

Planning Officer Trudi Ryan provided the staff report.

Public hearing opened at 11:14 p.m.

No speakers.

Public hearing closed at 11:14 p.m.

MOTION: Councilmember Moylan moved and Councilmember Martin-Milius seconded the motion to approve Alternatives 1, 2 and 3: 1) Introduce an Ordinance repealing the current parking code and providing revised parking requirements and adopt the Negative Declaration; 2) Repeal Resolution 193-76; and 3) Approve amendments to the Citywide Design Guidelines addressing parking lots and circulation.

AMENDMENT: Vice Mayor Whittum moved an amendment to remove the new maximums added by this.

Motion died for lack of second.

City Clerk Kathleen Franco Simmons read the ordinance title.

VOTE: 4 - 3 (Councilmember Meyering, Vice Mayor Whittum and Councilmember Davis dissented)

Following action on Item 8, Council took up and considered Consent Calendar Items 1.C and 1.L.

Vice Mayor Whittum reported he intended to recuse himself from voting on Consent Calendar Item 1.G due to the fact that his residence is within 500 feet.

Following action on Item 1.L, 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**

Vice Mayor Whittum provided a report of a recent VTA meeting.

Vice Mayor Whittum provided a report of a recent meeting of the El Camino Bus Rapid Transit Committee.

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

City Manager Gary Luebbers reported a decision by the State regarding the RDA.

Vice Mayor Whittum expressed support for a long term homeless shelter.

Councilmember Griffith provided information regarding a meeting of the Cities Association of Santa Clara County regarding RDA issues.

Councilmember Meyering proposed a study issue regarding how funding can be acquired to keep the homeless shelter open.  
Vice Mayor Whittum co-sponsored the study issue.

**INFORMATION ONLY REPORTS/ITEMS**

- Tentative Council Meeting Agenda Calendar
- RTC 12-292 Condition of Civic Center Campus Facilities - Information Only
- Study Session Summary of December 4, 2012 - Discussion of Land Use Alternatives for East Sunnyvale ITR Expansion
- National League of Cities Conference Trip Report – Councilmember Moylan
- Draft Minutes of the Sustainability Commission Meeting of November 19, 2012
- Draft Minutes of the Arts Commission Meeting of November 21, 2012

**ADJOURNMENT**

Mayor Spitaleri closed the meeting in memory of the families affected by the tragedy in Newtown, Connecticut.

Councilmember Martin-Milius closed the meeting in memory of Michael Wagner.

Mayor Spitaleri adjourned the meeting at 11:40 p.m.