

**APPROVED MINUTES\***  
**SUNNYVALE CITY COUNCIL**  
**TUESDAY, MARCH 19, 2013, 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 Jim Griffith  
Councilmember Christopher Moylan  
Councilmember David Whittum  
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  
Director of Community Development Hanson Hom  
Director of Public Works Kent Steffens  
City Clerk Kathleen Franco Simmons

**CLOSED SESSION REPORT FOR MARCH 19, 2013**

*Closed Session pursuant to Government Code Section 54957.6 – Conference with Labor Negotiators*

Vice Mayor Griffith reported a Closed Session was held pursuant to Government Code Section 54957.6 – Conference with Labor Negotiators, Sunnyvale Employees Association; nothing to report.

**PUBLIC ANNOUNCEMENTS**

Councilmember Meyering announced an upcoming Board and Commission application deadline.

Shane Jacksteit, Edward Jones Investments, announced an upcoming grand re-opening of their business and open house.

**CONSENT CALENDAR**

Councilmember Meyering pulled Items 1.D, 1.E and 1.F.

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

VOTE: 7 - 0

Mayor Spitaleri announced the remaining Consent Calendar items would be heard following the Public Hearing / General Business portion of the agenda.

- 1.A. Approval of Council Meeting Minutes of February 26, 2013
- 1.B. Approval of Council Meeting Minutes of March 5, 2013
- 1.C. Approval of Information/Action Items – Council Directions to Staff

**Fiscal Items**

- 1.D. RTC 13-063      List of Claims and Bills Approved for Payment by the City Manager – List Nos. 649 & 650

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

VOTE: 6 – 1 (Councilmember Meyering dissented)

- 1.E. RTC 13- 061      Resolution Approving Amended and Restated Local Goals and Policies for Community Facilities Districts in the City of Sunnyvale

MOTION: Vice Mayor Griffith moved and Councilmember Moylan seconded the motion to approve Alternative 1: Approve the Resolution to Amend and Restate Local Goals and Policies for Community Facilities Districts.

VOTE: 6 – 1 (Councilmember Meyering dissented)

- 1.F. RTC 13-070      Initiation of Proceedings to Establish City of Sunnyvale Community Facilities District No. 3 (Estates at Sunnyvale)

MOTION: Vice Mayor Griffith moved and Councilmember Moylan seconded the motion to approve Alternative 1: Initiate formation of City of Sunnyvale Community Facilities District No. 3 (Estates at Sunnyvale) by approving the Resolution of Intention to Establish a Community Facilities District.

VOTE: 6 – 1 (Councilmember Meyering dissented)

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

### **Contracts**

- 1.G. RTC 13-064 Award of Contract for Annual Financial Auditing Services (F13-35)

Staff Recommendation: Alternative 1: Award a contract, in substantially the same form as the draft Audit Services Agreement attached to the report, not to exceed \$509,960, to Macias Gini & O'Connell LLP and delegate authority to the City Manager to extend the contract for two (2) additional one-year periods, provided pricing and service remain acceptable to the City.

### **PUBLIC COMMENTS**

Peggy Kitting spoke regarding mobile home park regulations enforcement and provided a PowerPoint presentation.

Mayor Spitaleri requested the City Attorney look into the provisions described by Ms. Kitting to see what authority the City has, if any.

Deborah Marks spoke regarding the civic center and provided a PowerPoint presentation.

Michael Goldman spoke regarding the civic center and provided a PowerPoint presentation.

Steve Hoffman spoke regarding his standard of ethics with regard to public officials voting on an issue involving an individual, organization or industry from whom they've accepted money.

### **PUBLIC HEARINGS/GENERAL BUSINESS**

2. RTC 13-062 Discussion and Possible Action Regarding Budget Modification No. 36 to Appropriate \$2 Million of Santa Clara Valley Transportation Authority (VTA) Local Programs Reserve Grant Funds for a Mathilda Avenue/Route 237/Route 101 Transportation Improvement Project

Director of Public Works Kent Steffens provided the staff report.

Public hearing opened at 7:27 p.m.

No speakers.

Public hearing closed at 7:27 p.m.

MOTION: Councilmember Moylan moved and Councilmember Whittum seconded the motion to approve Alternative 1: Approve Budget Modification No. 36 to appropriate VTA Local Programs Reserve Funds in the amount of \$2 million and the balance of the required local match in the amount of \$1.5 million to project 826890 - Mathilda/237/101 Interchange Improvements.

VOTE: 7 – 0

3. RTC 13-066 2012-7990 Discussion and Possible Action on: General Plan and Downtown Specific Plan (DSP) Amendments for property along the north side of Evelyn Avenue from Mathilda Avenue to just east of Marshall Avenue; and, introducing ordinances for related zoning code amendments and related property rezoning:
- Repeal the Southern Pacific Corridor Site Specific Plan Areas 3, 4, and 5;
  - Expand the DSP boundaries to include up to nine parcels and establish new DSP Blocks;
  - Amend General Plan land use designations from Commercial General Business and Commercial Central Business to a variety of DSP and General Plan land uses including Transit Center, Mixed Use, and Residential Medium Density up to Residential Very High Density Residential (up to 65 dwelling units per acre);
  - Establish land use, density and development standards for properties annexed into the DSP, including Transit Center, Mixed Use and Residential;
  - Establish streetscape standards for Evelyn Avenue; and,
  - Rezone properties in accordance with Downtown Specific Plan or General Plan designation.

City Attorney Joan Borger explained the process for hearing Items 3, 4 and 5 with regard to the necessity of Councilmember Whittum and Mayor Spitaleri to recuse themselves due to conflicts of interest.

Councilmember Whittum disclosed his residence is within 500 feet of Blocks 21 and 22, recused himself and left the room. Councilmember Whittum also disclosed that he met with the developer regarding Block 23.

Mayor Spitaleri recused himself from the Block 21 segment and left the room.

Vice Mayor Griffith took the Mayor's seat.

Director of Community Development Hanson Hom provided the staff report relating to Block 21.

Public hearing was opened at 7:36 p.m. on Block 21.

Steve Hoffman asked Councilmembers Davis, Martin-Milius, Moylan and Griffith to recuse themselves from voting on this item.

Public hearing closed at 7:42 p.m.

MOTION: Councilmember Moylan moved and Councilmember Martin-Milius seconded the motion to approve Alternative 1.B) a., 1.B) c., 1.B) d., 1.D and 1.E applying to Block 21:

1. Adopt the Mitigated Negative Declaration and amend the General Plan and Downtown Specific Plan, amend the zoning code and rezone properties with the following actions:
  - B) Adopt a Resolution to amend the General Plan and Downtown Specific Plan to:
    - a. Expand the DSP boundaries to include eight additional parcels and change the General Plan land use designations from Commercial General Business and Commercial Central

Business to a variety of DSP land uses including Transit Center, Mixed Use, and Residential up to 48 dwelling units per acre;

c. Establish new DSP Block 21 with requirements specifying land use, density and development standards; and,

d. Establish streetscape standards for Evelyn Avenue between Sunnyvale Avenue and Marshall Avenue.

D) Introduce an ordinance to amend Title 19 (Zoning) of the Sunnyvale Municipal Code to establish new zoning districts for the Downtown Specific Plan (DSP) and include related development standards consistent with amendments to the Downtown Specific Plan.

E) Introduce an ordinance to rezone eight properties on the north side of Evelyn in accordance with Downtown Specific Plan designations.

VOTE: 4 – 1 (Councilmember Meyering dissented, Councilmember Whittum and Mayor Spitaleri recused)

Following action on Block 21, Mayor Spitaleri returned to the room and took his seat.

Director of Community Development Hanson Hom provided the staff report relating to Block 22.

Public hearing was opened at 7:58 p.m. on Block 22.

Steve Hoffman restated his request for Councilmembers Davis, Martin-Milius, Moylan and Griffith to recuse themselves from voting on the matter and requested Mayor Spitaleri recuse himself.

Eleanor Hansen inquired if the same level of scrutiny would be placed on this project as the armory project.

Public hearing closed at 8:02 p.m.

MOTION: Councilmember Moylan moved and Vice Mayor Griffith seconded the motion to approve the relevant portions of the following alternatives that apply only to Block 22 of the proposed Downtown Specific Plan: Alternative 1. A) 1.B) a., 1.B) c., 1.B) d., 1.D) and 1.E) with the following modifications: rather than rezone this into either commercial or residential, to keep it just commercially zoned:

1. Adopt the Mitigated Negative Declaration and amend the General Plan and Downtown Specific Plan, amend the zoning code and rezone properties with the following actions:

A) Adopt a Resolution to Repeal the Southern Pacific Corridor Site Specific Plan Areas 3, 4, and 5.

B) Adopt a Resolution to amend the General Plan and Downtown Specific Plan to:

a. Expand the DSP boundaries to include eight additional parcels and change the General Plan land use designations from Commercial General Business and Commercial Central Business to a variety of DSP land uses including Transit Center, Mixed Use, and Residential up to 48 dwelling units per acre;

c. Establish new DSP Block 22 with requirements specifying land use, density and development standards; and,

d. Establish streetscape standards for Evelyn Avenue between Sunnyvale Avenue and Marshall Avenue.

D) Introduce an ordinance to amend Title 19 (Zoning) of the Sunnyvale Municipal Code to

establish new zoning districts for the Downtown Specific Plan (DSP) and include related development standards consistent with amendments to the Downtown Specific Plan.

E) Introduce an ordinance to rezone eight properties on the north side of Evelyn in accordance with Downtown Specific Plan designations.

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

Following action on Block 22, Councilmember Whittum returned to the room and took his seat.

Director of Community Development Hanson Hom provided the staff report relating to Block 23.

Public Hearing was opened at 8:28 p.m. on Block 23.

Andy Frazer suggested a financial and economic analysis be required for every large development project.

Applicant Jon Moss, Prometheus, provided information and a PowerPoint presentation regarding the project.

Gary Dahl asked if the developer had a plan for low income tenants.

Maria Pan expressed concerns regarding extending the boundaries of the Downtown Specific Plan to Block 23 and the impact of the ground shaking from the railroad. Pan also expressed concern regarding traffic and asked that Council not adopt the mitigated negative declaration.

Steve Hoffman requested all Councilmembers except Whittum and Meyering recuse themselves from voting on the item.

Jean Chen expressed concerns regarding traffic and parking impacts to current residents during construction and after the construction is complete.

Edward Jones expressed concerns regarding the entitlements for people who will be displaced.

Eleanor Hansen spoke regarding traffic impacts in the area of the Caltrain station and recommended a full EIR and review of the traffic impact analysis.

Mark Sabin spoke regarding salaries and median housing price of homes in Sunnyvale. Sabin also spoke regarding CO<sub>2</sub> emissions.

Sandra Escobar, Santa Clara County Housing Action Coalition, spoke in support of the project.

Applicant Jon Moss responded to concerns expressed by earlier speakers.

Public hearing closed at 9:04 p.m.

MOTION: Councilmember Whittum moved to adjust zoning designations to reflect current uses more or less in line with things that were discussed earlier in questions and answers with staff, and incorporating that within the DSP.  
Motion died for lack of second.

MOTION: Councilmember Moylan moved regarding Block 23, to add it to the Downtown Specific Plan and rezone it for housing but the units per acre be something on the order of 34 expandable to 48 with the different bonuses.  
Motion died for lack of second.

MOTION: Councilmember Martin-Milius moved and Vice Mayor Griffith seconded the motion to make Block 23 inclusionary in the Downtown Specific Plan and bring the existing buildings up to 48 as a base. Councilmember Martin-Milius confirmed the motion follows staff recommendation, including the general plan and zoning changes for the 470 Marshall Avenue parcel outlined in Alternative 1. C) Adopt a Resolution to amend the General Plan for 470 Marshall Avenue from Commercial General Business to Residential Medium Density, and Alternative 1.F) Introduce an ordinance to rezone 470 Marshall from Commercial Service (C-4) to Medium Density Residential/Planning Development (R-3/PD).

City Clerk Kathleen Franco Simmons read the ordinance titles.

VOTE: 3 - 4 (Councilmembers Meyering, Whittum, Moylan and Davis dissented)  
Motion failed.

MOTION: Councilmember Martin-Milius moved and Councilmember Moylan seconded the motion to approve the change of zoning, change the DSP, and lower the base density of Block 23 to R-4 at 36 units per acre.

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

Council recessed at 9:44 p.m.

Council reconvened at 9:58 p.m. with all Councilmembers present.

4. RTC 13-068      2012-7462 - Prometheus Real Estate Group / Evelyn Ave. Associates LLC Discussion and Possible Action on Application(s) for Special Development Permit for a 2.31 acre site located at 457-475 E. Evelyn Avenue in a Commercial Service/Planned Development (C-4/PD proposed DSP-23 Zoning District (APNs: 209-04-053 & 054):  
Special Development Permit to allow the development of 158 apartments;  
Vesting Tentative Map to create one lot pursuant to a lot line adjustment.

Director of Community Development Hanson Hom recommended tabling this item based on action on the prior matter.

Public hearing was opened at 10:03 p.m.

Josephine McElroy requested consideration of moving the entrance/exit location of the 457 proposal to the Marshall or Bayview intersections in order to eliminate the impact of headlights shining into her residence. McElroy requested the public comment process be brought in earlier in the design phase. She also expressed concerns regarding potential

safety hazards due to lack of turn space for cars going into the proposed complex and to the Kindercare center.

Madhavi Dalmia expressed concerns regarding traffic and school capacities.

Steve Hoffman spoke regarding his right to speak about his ethical standards.

Eleanor Hansen suggested having the developer give the presentation first for Item 5.

Public hearing closed at 10:18 p.m.

MOTION: Vice Mayor Griffith moved and Councilmember Moylan seconded the motion to refer this item back to staff and the Planning Commission.

FRIENDLY AMENDMENT: Councilmember Whittum offered a friendly amendment to incorporate Ms. McElroy's comments regarding safety and including public input earlier in the process as the item goes forward.

Vice Mayor Griffith accepted the friendly amendment.

VOTE: 6 – 1 (Councilmembers Meyering dissented)

5. RTC 13-067      2012-7460 - Prometheus Real Estate Group / Des Nolan Discussion and Possible Action on Application(s) for Special Development Permit for a .98 acre site project located at 388 - 394 E. Evelyn Avenue and 151-153 S. Bayview Avenue in an DSP-4 (Downtown Specific Plan - Block 4) Zoning District (APNs: 209-05-019, 020, 021 & 022): Special Development Permit to allow the development of 67 apartments; Vesting Tentative Map to create one lot pursuant to a lot line adjustment.

Director of Community Development Hanson Hom provided the staff report.

Public hearing opened at 10:29 p.m.

Applicant Jon Moss provided information about the project.

Kira Od spoke regarding plaque designs for the exterior of the proposed building.

Madhavi Dalmia expressed concerns regarding increasing traffic and density in this area.

Steve Hoffman spoke regarding the impacts to public safety with increased density.

Gary Dahl stated he has no objections to the zoning changes.

Edward Jones spoke in opposition to the project and recommended consideration of building a hotel.

Sandra Escobar spoke on behalf of the Santa Clara County Housing Action Coalition and in support of higher density housing.

David Blackwell, Allen Matkins law firm, spoke regarding State law regulating density bonus waivers.

Lyle Tomme stated he is a resident of the hotel and received no notification of this project. Tomme expressed concerns regarding the timing of the demolition and parking in the area.

Applicant Jon Moss responded to questions and comments.

Public hearing closed at 11:23 p.m.

MOTION: Councilmember Martin-Milius moved and Councilmember Davis seconded the motion to approve Alternative 1: Adopt the Mitigated Negative Declaration and approve the Special Development Permit and Vesting Tentative Map with conditions.

VOTE: 5 – 2 (Councilmembers Meyering and Moylan dissented)

Vice Mayor Griffith sponsored a study issue to look at the appropriateness of stacker spaces and whether or not our codes and requirements should take stacker spaces into account. Councilmember Martin-Milius co-sponsored the study issue.

6. RTC 13-069 Discussion and Possible Action Regarding the Draft Request for Proposals for the Sale of the Raynor Activity Center

Director of Public Works Kent Steffens provided the staff report.

Public hearing opened at 11:44 p.m.

David Scholz stated that the response time of three weeks may be too short and recommended extending the time to 60 days to allow time for due diligence.

Public hearing closed at 11:47 p.m.

MOTION: Councilmember Moylan moved and Councilmember Whittum seconded the motion to approve Alternative 1: Approve the draft Request for Proposals for the Sale of the Raynor Activity as submitted.

FRIENDLY AMENDMENT: Councilmember Whittum offered a friendly amendment to add a couple of weeks to the time line for responses. Councilmember Moylan modified and accepted the friendly amendment to add one week to the response time to make it one month.

AMENDMENT: Councilmember Whittum moved an amendment to make the response time five weeks total. Motion died for lack of second.

VOTE: 6 – 1 (Councilmember Meyering dissented)

7. RTC 13-060 Discussion and Possible Action to Approve the City's Code of Ethics and Conduct for Elected and Appointed Officials

Assistant City Manager Robert Walker provided the staff report.

Public hearing opened at 11:50 p.m.

Michael Goldman spoke regarding the section on elected and appointed officials' conduct with the public.

Steve Hoffman recommended additional items relating to the acceptance of money from businesses that will benefit directly or indirectly from a Councilmember's vote.

Public hearing closed at 11:57 p.m.

MOTION: Councilmember Martin-Milius moved and Councilmember Whittum seconded the motion to approve Alternative 1: Review and approve the 2013 Code of Ethics and Conduct for Elected and Appointed Officials as presented.

FRIENDLY AMENDMENTS: Vice Mayor Griffith offered two friendly amendments: on page 14, in the first line of new language, amend the language to "intergovernmental assignments or council subcommittees" and in the second line of new language, revise to read "may not represent the City on intergovernmental assignments or subcommittees and may be subject to sanctions."

Councilmember Martin-Milius accepted the friendly amendments.

VOTE: 5 - 1 - 1 (Councilmember Whittum dissented, Councilmember Meyering abstained)

Following action on Item 7, Council took up and considered Consent Calendar Items 1.D, 1.E and 1.F.

Following action on Consent Calendar Item 1.F, 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 Whittum reported a meeting of the VTA Policy Advisory Committee.

Councilmember Martin-Milius reported a meeting of the Stevens Creek Trail Committee.

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

Councilmember Whittum reported the subject of a Cupertino City Council Closed Session this evening and requested additional information from staff.

Councilmember Whittum reported a meeting he attended with neighbors from the Stevens Creek Neighborhood Association regarding traffic around West Valley Elementary School.

MOTION: Vice Mayor Griffith moved and Councilmember Martin-Milius seconded the motion to put on a future agenda properly timed for consideration at the 2013 election a review of our TOT for possible action.

Mayor Spitaleri requested it be put on an agenda.

Councilmember Davis spoke regarding a program in San Jose called 1,000 Hearts and a1,000 Minds.

MOTION: Councilmember Meyering moved and Councilmember Whittum seconded the motion to request staff come back with a report concerning a Charter amendment for the November ballot to have the Sunnyvale Mayor selected by strict rotation with one year terms and have the Mayor chosen by rotation.

VOTE: 4 – 3 (Vice Mayor Griffith, Mayor Spitaleri, and Councilmember Martin-Milius dissented)

Mayor Spitaleri provided an update on the scheduling of a meeting with the school districts.

City Manager Luebbers stated he will provide a report on the improvements and repairs to one of the Jackson Street homes.

City Manager Luebbers reported on the efforts to coordinate a Council teambuilding workshop and recommended postponing the exercise until January.

Mayor Spitaleri stated the workshop will be postponed until January.

**INFORMATION ONLY REPORTS/ITEMS**

- Tentative Council Meeting Agenda Calendar
- Draft Minutes of the Sustainability Commission Meeting of February 19, 2013
- Draft Minutes of the Board of Library Trustees Meeting of March 4, 2013

**ADJOURNMENT**

Mayor Spitaleri adjourned the meeting at 12:26 a.m.

---

Kathleen Franco Simmons  
City Clerk