

**DRAFT MINUTES\***  
**SUNNYVALE CITY COUNCIL**  
**TUESDAY, MAY 21, 2013, 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 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  
Director of Library and Community Services Lisa Rosenblum  
City Clerk Kathleen Franco Simmons

**CLOSED SESSION REPORT FOR MAY 21, 2013**

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

Vice Mayor Griffith reported Council met in Closed Session regarding a performance evaluation for the city manager.

**SPECIAL ORDER OF THE DAY** – Mayor Spitaleri presented a proclamation to Director of Public Works Kent Steffens in recognition of National Public Works Week, May 19 – 25, 2013.

*\*Pending Council Approval*

## **PUBLIC ANNOUNCEMENTS**

Councilmember Moylan announced a volunteer opportunity in the Office of the City Manager.

Anu Ganguly announced an upcoming meeting of the Sunnyvale Democratic Club.

Holly Lofgren commemorated the contributions of Dale O'Rourke to the City of Sunnyvale Pool Trust Fund.

## **CONSENT CALENDAR**

Councilmember Meyering pulled Items 1.A, 1.C, 1.F and 1.K.

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

VOTE: 7 - 0

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

Following action on Item 8, Council considered Consent Calendar Items 1.A, 1.C, 1.F and 1.K.

Councilmember Meyering requested to record a no vote on Consent Calendar Items 1.A, 1.C and 1.F.

MOTION: Vice Mayor Griffith moved and Councilmember Whittum seconded the motion to approve Consent Calendar Items 1.A, 1.C and 1.F.

VOTE: 6 - 1 (Councilmember Meyering dissented)

1.A. Approval of Council Meeting Minutes of May 7, 2013

MOTION: Vice Mayor Griffith moved and Councilmember Whittum seconded the motion to approve the Council Meeting Minutes of May 7, 2013.

VOTE: 6 - 1 (Councilmember Meyering dissented)

1.B. Approval of Information/Action Items – Council Directions to Staff

## **Fiscal Items**

1.C. RTC 13-120 List of Claims and Bills Approved for Payment by the City Manager – List Nos. 658 and 659

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

VOTE: 6 - 1 (Councilmember Meyering dissented)

- 1.D. RTC 13-122 Approve Agreement with MP Homestead Park Associates, L.P., a Legal Entity of MidPen Housing Corporation, for a Loan of \$5 Million in Housing Mitigation Funds to Rehabilitate Homestead Park Apartments

Staff Recommendation: Approve the Loan Agreement with MP Homestead Park Associates, L.P., a legal entity of MidPen Housing Corporation in substantially the form provided in the report and authorize the City Manager to execute the agreement and associated loan documents in final form as approved by the City Attorney

- 1.E. RTC 13-123 Approval of Budget Modification No. 44 to Appropriate \$149,155 from the General Fund's Budget Stabilization Fund for Undergrounding of Overhead Utilities

Staff Recommendation: Approve Budget Modification No. 44 to appropriate funds for the City's fair-share contribution for utility undergrounding.

- 1.F. RTC 13-116 Approval of Budget Modification No. 45 to Appropriate \$275,000 from the Liability and Property Insurance Fund Reserve and \$150,000 from the Office of the City Attorney's General Fund Operating Budget for Litigation Costs and Services

MOTION: Vice Mayor Griffith moved and Councilmember Whittum seconded the motion to approve Budget Modification No. 45 to appropriate \$275,000 from the Liability and Property Insurance Fund Reserve and \$150,000 from the Office of the City Attorney's current operating budget in the General Fund to cover outside legal services and other costs related to tort litigation.

VOTE: 6 - 1 (Councilmember Meyering dissented)

### **Contracts**

- 1.G. RTC 13-112 Award of Contract for Floor Covering and Wall Carpet Removal and Replacement at the Department of Public Safety Building (F13-48)

Staff Recommendation: Award a contract in the amount of \$97,000 to G & S Carpet Mills and; approve a 20% contingency in the amount of \$19,400.

- 1.H. RTC 13-118 Award of Bid No. PW13-13 for Downtown Streetscape Improvements - Phase II

Staff Recommendation: Award a contract in substantially the same format as the draft attached to the report and in the amount of \$608,375 to Redgwick Construction Company Inc. for the subject project, 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 \$60,838.

- 1.I. RTC 13-117 Award of Contract for the Design of Storm System Trash Capture Devices (F13-37)

Staff Recommendation: Award a contract in substantially the same form as the draft attached to the report and in the amount of \$108,570 to Kimley-Horn & Associates Inc. for the subject project, authorize the City Manager to execute the contract when all the necessary conditions have been met, approve optional services in an amount not to exceed \$23,920, to be used if necessary; and approve a 10% contract contingency in the amount of \$10,857.

- 1.J. RTC 13-119 Award of Contract for the Maintenance of the City's Radio Communication Systems (F13-57)

Staff Recommendation: Award a contract in substantially the same form as the draft attached to the report and in the amount of \$140,958, to Motorola, Inc. for maintenance of the City's radio communications systems.

**Other Items**

- 1.K. RTC 13-124 Authorization for the Mayor and City Manager to Sign the Santa Clara County Island Annexation Mapping Request Form to Initiate the Annexation Process for Two Island Areas located within the City of Sunnyvale Urban Service Area but Currently Under the County of Santa Clara's Jurisdiction (Central Expressway and Butcher's Corner)

Public Hearing opened at 12:53 a.m.

Mei-Ling Stefan spoke regarding the lack of opportunities for discussion and public input in the process.

Steve Hoffman spoke regarding Parliamentary procedures and the placement of items on the Consent Calendar that will be pulled for separate consideration.

Public Hearing closed at 12:58 a.m.

MOTION: Councilmember Whittum moved and Councilmember Moylan seconded the motion to authorize the Mayor and City Manager to sign the Santa Clara County Island Annexation Mapping Request Form to initiate the annexation process for two island areas located within the City of Sunnyvale Urban Service Area but currently under the County of Santa Clara's jurisdiction (Central Expressway and Butcher's Corner).

VOTE: 6 - 1 (Councilmember Meyering dissented)

Following action on this item, Council resumed the meeting at Councilmember Reports on Activities from Intergovernmental Committee Assignments.

- 1.L. ORDINANCE Adoption of Ordinance 2998-13 Amending Sunnyvale Municipal Code Chapters 1.04 and 1.05 Related to Criminal and Administrative Citations for Violations of the Municipal Code

Staff Recommendation: Adopt Ordinance 2998-13.

## **PUBLIC COMMENTS**

Michael Goldman spoke regarding campaign finance reform in Sunnyvale and provided a PowerPoint presentation.

MOTION: Councilmember Meyering moved and Councilmember Whittum seconded the motion to put campaign finance matching by the City of Sunnyvale on the next Council meeting agenda.

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

Peggy Kitting spoke regarding alleged unethical business practices by the owner of Fair Mobile Home Lodge and provided a PowerPoint presentation.

Tap Merrick spoke regarding the mobile home park issue and regarding the contingencies included in contracts in Items 1.G, 1.H and 1.I. Merrick requested an annual report summarizing usage of contingencies.

Steve Hoffman spoke regarding alleged ethics violations and requested Council put on the next meeting agenda an item to discuss amending Sunnyvale's guide on ethics to specifically prohibit Councilmembers from voting on matters for which they have received money or the like from an applicant directly or indirectly.

Kathryn Eckardt spoke regarding alleged public safety prejudice and bias regarding the care of her elderly mother.

## **PUBLIC HEARINGS/GENERAL BUSINESS**

### 2. RTC 13-113 Board and Commission Appointments

City Clerk Kathleen Franco Simmons provided a brief report.

MOTION: Councilmember Moylan moved and Councilmember Davis seconded the motion to postpone the appointments to the Planning Commission, Sustainability Commission or any commission in which the applicant was not scheduled for an interview because he or she was appointed in the last year, to offer those applicants an interview with Council and vote on appointments to those commissions next time.

FRIENDLY AMENDMENT: Vice Mayor Griffith offered a friendly amendment to revise the motion to not include Sustainability Commission Category 2 as there is only one applicant. Councilmember Moylan accepted the friendly amendment.

VOTE: 6 – 1 (Councilmember Meyering dissented)

### **Arts Commission (2 vacancies)**

2 Terms to 6/30/2017

Moshier, Suzanne

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

Springer, Wendy  
VOTE: 3 – 0 – 4 (Vice Mayor Griffith, Mayor Spitaleri, Councilmembers Martin-Milius and Davis abstained)

Sumner, Robert  
VOTE: 7 – 0

City Clerk Kathleen Franco Simmons announced Suzanne Moshier and Robert Sumner have been appointed to the Arts Commission for terms expiring June 30, 2017.

**Board of Library Trustees (1 vacancy)**

1 Term to 6/30/2017

Davis-East, Anne  
VOTE: 5 – 0 – 2 (Councilmembers Meyering and Davis abstained)

Potolsky, Alicia  
VOTE: 2 – 0 – 5 (Vice Mayor Griffith, Mayor Spitaleri, Councilmembers Moylan, Martin-Milius and Davis abstained)

City Clerk Kathleen Franco Simmons announced Anne Davis-East has been appointed to the Board of Library Trustees for a term expiring June 30, 2017.

**Housing and Human Services Commission (2 vacancies)**

2 Terms to 6/30/2017

Gilbert, Diana  
VOTE: 6 – 0 – 1 (Mayor Spitaleri abstained)

Sidhu, Navpreet  
VOTE: 7 – 0

Evans, Patti  
VOTE: 2 – 0 – 5 (Councilmember Whittum, Vice Mayor Griffith, Councilmembers Moylan, Martin-Milius and Davis abstained)

City Clerk Franco Simmons announced Diana Gilbert and Navpreet Sidhu have been appointed to the Housing and Human Services Commission for terms expiring June 30, 2017.

**Housing and Human Services Commission (2 vacancies)**

2 Terms to 6/30/2015

Evans, Patti  
VOTE: 5 – 0 – 2 (Mayor Spitaleri and Councilmember Davis abstained)

City Clerk Franco Simmons announced Patti Evans has been appointed to the Housing and Human Services Commission for a term expiring June 30, 2015.

**Parks and Recreation Commission (2 vacancies)**

2 Terms to 6/30/2017

Kenton, Ralph

VOTE: 5 – 0 – 2 (Councilmembers Meyering and Whittum abstained)

Pochowski, Robert

VOTE: 6 – 0 – 1 (Councilmember Davis abstained)

Springer, Wendy

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

City Clerk Franco Simmons announced Ralph Kenton and Robert Pochowski have been appointed to the Parks and Recreation Commission for terms expiring June 30, 2017.

**Personnel Board (1 vacancy - Council Nominated)**

1 Term to 6/30/2017

Sellers, Garry

VOTE: 7 – 0

Springer, Wendy

VOTE: 0 – 0 – 7 (Councilmember Meyering, Councilmember Whittum, Vice Mayor Griffith, Mayor Spitaleri, Councilmembers Moylan, Martin-Milius and Davis abstained)

City Clerk Franco Simmons announced Garry Sellers has been appointed to the Personnel Board for a term expiring June 30, 2017.

**Sustainability Commission (1 vacancy – Category 2)**

1 Term to 6/30/2017

Harrison, Sue – Category 2

VOTE: 7 – 0

City Clerk Franco Simmons announced Sue Harrison has been appointed to the Sustainability Commission - Category 2 for a term expiring June 30, 2017.

3. RTC 13-121 Discussion and Possible Action Regarding Proposals for the Operation of Public Swim Programs at Fremont High School Pool

Director of Library and Community Services Lisa Rosenblum presented the staff report and Risk Manager Anthony Giles provided additional information.

Public Hearing opened at 8:09 p.m.

Margaret Copley, President of Sunnyvale Swim Club, spoke regarding the potential impact of the increase in insurance on other renter programs.

Holly Lofgren spoke endorsed California Sports Center, expressed concerns regarding the increase in liability insurance and requested adoption of Alternative 1.

Tap Merrick recommended re-establishing Lakewood Pool and using any remaining funds and contingency money to reopen Lakewood Pool for the summer.

Dave Peterson, California Sports Center, expressed appreciation to staff, the Friends of Fremont Pool, and the patrons of the pool over the last 11 years.

Public Hearing closed at 8:29 p.m.

MOTION: Vice Mayor Griffith moved and Councilmember Martin-Milius seconded the motion to approve Alternative 1: Approve, in substantially the same form as attached to the report, the proposed Agreement between California Sports Center and the City of Sunnyvale for the Operation of Public Swim Programs at Fremont High School Pool.

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

4. RTC 13-125 Discussion and Possible Action Regarding Identification of a Preferred Site for Construction of a City Branch Library

Assistant City Manager Robert Walker presented the staff report.

Public Hearing opened at 9:15 p.m.

Jill Shanmugasundaram, Chair of the Library Board of Trustees reported the Board's unanimous support of the staff recommendation. Speaking for herself, Shanmugasundaram suggested the proposed location would be good for the area.

Leah Lane, Treasurer of Lakewood Village Neighborhood Association, read a letter of support from the President on behalf of the Association.

Tap Merrick stated that in addition to the library the Lakewood Village residents also want the pool and with the library moving away from the pool location it opens up the possibility of also having the pool.

Steve Hoffman spoke in support of a branch library and in opposition to the way it is funded.

Public Hearing closed at 9:26 p.m.

MOTION: Councilmember Moylan moved and Councilmember Davis seconded the motion to approve Alternative 1: Pursue designs for a branch library at Lakewood Park. Staff to return to Council for approval of a design consultant contract.

VOTE: 7 – 0

5. RTC 13-126 Discussion and Possible Action Regarding Proposed Changes to the Cupertino Middle School Open Space Site Plan

Director of Public Works Kent Steffens presented the staff report.

Public Hearing opened at 9:37 p.m.

Rick Hausman, Chief Business Officer, Cupertino Union School District, expressed the Board's agreement with modifying the softball field to make it suitable to replace the existing softball field and conveyed the Board's adamant opposition to relocation of the multipurpose building. Hausman provided information regarding a successful pilot program of remote bussing of students and stated a traffic study has been commissioned.

Elaine Enos provided photographs and spoke regarding the impact of the loss of open space and urged Council to only approve the plan if the multipurpose building, parking lot and basketball courts are relocated.

Warren Enos spoke in support of the Parks and Recreation Commission recommendation that Council consider the concern of neighbors regarding the location of the multipurpose center and perhaps swap it with the softball field, and expressed concerns about the potential dramatic changes to the neighborhood.

Marianne Saneinejad expressed concerns regarding traffic impacts of the proposed plan.

Tap Merrick spoke regarding the impact of high-density housing in other areas of the City.

Ashish Mukherji expressed concerns regarding the impact of vehicle lights shining on the windows of the residents on Helena Drive.

Lydia Pollak expressed concerns regarding the proposed plan.

Andy Frazer spoke regarding the advantages of locating the facility on the Southwest corner of the property along Bernardo and the disadvantages of locating it on the Northeast corner of the property along Helena Drive. Frazer requested Council reject Alternative 1.

Steve O'Brien spoke regarding the uses of the new facility and questioned whether the school district will be renting the space to outside groups for revenue. O'Brien questioned the district's residency verification procedures.

Jack Greenbaum spoke regarding the traffic problems on Helena Drive and proposed moving the entrance to the school to Bernardo Drive.

Lou Wirtz spoke in opposition to the proposed plan and recommended moving the building to Bernardo to preserve the open space on Helena.

Russ Cole spoke in opposition to the proposed plan, citing impacts to traffic, loss of view and a decrease in property value. Cole encouraged Council to vote against the expansion project.

Bill Teter spoke in opposition to the proposed plan, submitted written materials and asked Council to do what they can to preserve the neighborhood and open space.

Susan Arnold asked Council to ask the school board to work on a different plan.

Bambi Fernandez spoke in opposition to a 32 foot tall building being constructed to look down into her backyard and recommended moving the multi-purpose building and parking lot to Bernardo.

Cynthia Hayes-Rupp spoke in support of the comments of the earlier speakers, expressed disappointment in the communication from the school district and suggested renovation of the current buildings.

Robert Given spoke regarding the amount of traffic on The Dalles and requested consideration of the traffic patterns.

Mary Lynn Teter spoke regarding traffic safety concerns and expressed opposition to placing the 27 car parking lot on Helena Drive.

Greg Arnold asked Council to reject the proposed plan and requested reconsideration of the placement of the building.

Steve Hoffman stated he doesn't recall any additional houses added within a two-mile radius around the school in many years, suggested the school needs to expand because of other high density residential construction around Sunnyvale, and alleged unethical actions of Councilmembers who have voted on projects.

Glenn Hendricks, member of the Planning Commission speaking as an individual, spoke regarding the reduction of open space and recommended requesting the school district commit to not expanding any of the existing facilities for private education. Hendricks spoke in support of working with the district to reduce the traffic challenges in the area, to work with all school districts to reduce or eliminate any future encroachment on park space and to continue the City's efforts to expand City-owned park space.

Public Hearing closed at 10:51 p.m.

MOTION: Councilmember Davis moved and Councilmember Moylan seconded the motion to approve Alternative 3: Do not approve the proposed revised Site Plan for Cupertino Middle School open space per Attachment B to the report.

VOTE: 7 - 0

Council recessed at 11:29 p.m.

Council reconvened at 11:43 p.m. with all Councilmembers present.

6. RTC 13-114      Public Hearing, Discussion and Possible Action to Adopt a Resolution to Levy an Annual Assessment for the Downtown Sunnyvale Business Improvement District for Fiscal Year 2013/2014

Councilmember Whittum disclosed his home is within 500 feet of the business improvement district, recused himself and left the room.

Economic Development Manager Connie Verceles presented the staff report. Business Improvement District Director Joel Wyrick provided information.

Public Hearing opened at 11:47 p.m.

Leigh Odum spoke in support of the business improvement district.

Susan Walker, owner of Brandon's Wine, spoke regarding her protest letter.

Public Hearing closed at 12:17 p.m.

MOTION: Vice Mayor Griffith moved and Councilmember Moylan seconded the motion to approve Alternative 1: Adopt the Resolution to Levy an Annual Assessment for the Downtown Sunnyvale Business Improvement District.

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

7. RTC 13-115      Public Hearing, Discussion and Possible Action to Introduce an Ordinance Amending Chapter 3.60 - Downtown Sunnyvale Business Improvement District of Title 3 - Revenue and Finance of the Sunnyvale Municipal Code to Expand Zone C of the Sunnyvale Business Improvement District

Economic Development Manager Connie Verceles presented the staff report.

Public Hearing opened at 12:23 a.m.

No speakers.

Public Hearing closed at 12:23 a.m.

MOTION: Vice Mayor Griffith moved and Councilmember Moylan seconded the motion to approve Alternative 1: Introduce the Ordinance Amending Chapter 3.60 – Downtown Sunnyvale Business Improvement District of Title 3 – Revenue and Finance of the Sunnyvale Municipal Code.

City Clerk Kathleen Franco Simmons read the ordinance title.

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

Following action on this item, Councilmember Whittum returned to the room and took his seat at the dais.

MOTION: Councilmember Whittum moved and Vice Mayor Griffith seconded the motion to consider the remainder of the items on the agenda.

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

8. RTC 13-127      Discussion and Possible Action on a Ballot Measure to Increase the Transient Occupancy Tax

Director of Finance Grace Leung presented the staff report.

Public Hearing opened at 12:32 a.m.

Steve Hoffman spoke regarding the increase in the cost of travel for clients who attend his seminars and suggested consideration of other sources of revenue.

Public Hearing closed at 12:34 a.m.

MOTION: Councilmember Whittum moved to direct staff to pursue a ballot measure for the November 2013 election to increase the TOT tax rate to 12%.  
Motion died for lack of a second.

MOTION: Councilmember Davis moved to direct staff to pursue a ballot measure for the November 2013 election to increase the TOT tax rate to 10.4% and that the revenue generated from the tax be designated to be used to supplement the personnel costs of the Department of Public Safety.  
Motion died for lack of a second.

MOTION: Councilmember Whittum moved and Vice Mayor Griffith seconded the motion to approve direct staff to pursue a ballot measure for the November 2013 election to increase the TOT tax rate to 10.5%.

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

Following action on Item 8, Council considered Consent Calendar Items 1.A, 1.C, 1.F and 1.K.

Following action on Items 1. A, 1.C, 1.F and 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 Whittum reported his attendance at a meeting of the VTA Board.

MOTION: Councilmember Davis moved and Councilmember Meyering seconded the motion to put on the next meeting agenda the issue of raising the minimum wage in the City of Sunnyvale.

VOTE: 4 - 3 (Councilmember Whittum, Vice Mayor Griffith and Councilmember Moylan dissented)

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

Vice Mayor Griffith and Mayor Spitaleri expressed appreciation to staff for the Hands on the Arts event.

### **INFORMATION ONLY REPORTS/ITEMS**

- Tentative Council Meeting Agenda Calendar
- RTC 13-111 Board/Commission Resignation (Information Only)
- Study Session Summary of May 14, 2013 – Board and Commission Interviews
- Draft Minutes of the Board of Library Trustees Meeting of May 13, 2013
- Draft Minutes of the Parks and Recreation Commission Meeting of May 8, 2013
- Draft Minutes of the Heritage Preservation Commission Meeting of April 3, 2013

### **ADJOURNMENT**

Mayor Spitaleri adjourned the meeting at 1:11 a.m.