

**APPROVED MINUTES\***  
**SUNNYVALE CITY COUNCIL**  
**TUESDAY, AUGUST 27, 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  
City Attorney Joan Borger  
Director of Finance Grace Leung  
Director of Public Safety Frank Grgurina  
Director of Human Resources Teri Silva  
Director of Public Works Kent Steffens  
Director of Environmental Services John Stufflebean  
Planning Officer Trudi Ryan  
City Clerk Kathleen Franco Simmons

**CLOSED SESSION REPORT FOR AUGUST 27, 2013**

*Closed Session Pursuant to California Government Code Section 54956.9 (d)(4) - Initiation of Litigation - One Potential Case*

Vice Mayor Griffith reported approval was given to initiate an action if necessary; the action, defendants, and the other particulars shall, once formally commenced, be disclosed upon request consistent with the Brown Act.

**PUBLIC ANNOUNCEMENTS**

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

**CONSENT CALENDAR**

Councilmember Meyering pulled Items 1.A and 1.D.

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

VOTE: 7 - 0

Council considered the pulled Consent Calendar items following Item 9.

1.A. Approval of Council Meeting Minutes of August 13, 2013

MOTION: Vice Mayor Griffith moved and Councilmember Moylan seconded the motion to approve the Council Meeting Minutes of August 13, 2013.

VOTE: 6 - 1 (Councilmember Meyering dissented)

1.B. Approval of Council Meeting Minutes of August 20, 2013

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

**Fiscal Items**

1.D. RTC 13-205 List of Claims and Bills Approved for Payment by the City Manager – List Nos. 672 & 673

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

VOTE: 6 - 1 (Councilmember Meyering dissented)

1.E. RTC 13-195 Approve Budget Modification No. 6 to Appropriate \$1,400 of Department of Homeland Security, State Homeland Security Grant Program Funds for Training

Staff Recommendation: Approve Budget Modification No. 6 to appropriate \$1,400 of Department of Homeland Security, State Homeland Security Grant Program Funds for Training to a new project, FFY 2011 SHSGP – Training, CESA Conference.

1.F. RTC 13-203 Approve Budget Modification No. 10 to Appropriate \$2,098 of Department of Homeland Security, State Homeland Security Grant Program Funds for Training

Staff Recommendation: Approve Budget Modification No. 10 to appropriate \$2,098 of Department of Homeland Security, State Homeland Security Grant Program Funds for Training to a new project, FFY 2011 SHSGP – Training, IACA Conference.

- 1.G. RTC 13-200 Approval of Budget Modification No. 9 to Appropriate \$39,692 of Santa Clara County EMS Enhancement Projects Funds for the Santa Clara County Comprehensive EMS Patient Care Data System

Staff Recommendation: Approve Budget Modification No. 9 to appropriate \$39,692 of Santa Clara County EMS Enhancement Projects Funds to a new project, FY 2013/14 Comprehensive EMS Patient Care Data System.

- 1.H. RTC 13-210 Approve Budget Modification No. 7 to Appropriate \$27,000 of Transportation Development Act Grant Funds for Pedestrian Facility Improvements at the Intersection of Remington and Manet Drives

Staff Recommendation: Approve Budget Modification No. 7 to appropriate Transportation Development Act funds in the amount of \$ 27,000 to a new project, Remington Drive/Manet Drive Pedestrian Improvements.

### **Contracts**

- 1.I. RTC 13-199 Award of Contract for Adult and Juvenile Audiovisual Materials (F14-07)

Staff Recommendation: Award a contract in an amount not to exceed \$147,000 to Midwest Tape for adult and juvenile audiovisual materials; and delegate authority to the City Manager to renew the contract for two additional one-year periods, providing pricing and service remain acceptable to the City.

- 1.J. RTC 13-208 Award of Bid No. PW13-22 for Rehabilitation of Anaerobic Digesters No. 1 and No. 2 and Improvements to No. 3

Staff Recommendation: Award a contract in the amount of \$5,262,700 to Aztec Consultants 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 \$526,270.

### **Other**

- 1.K. ORDINANCE NO. 3001-13 Adopt Ordinance 3001-13 Amending Chapter 5.38 (Plastic Carryout Bags) of Title 5 (Business Licenses and Regulations) of the Sunnyvale Municipal Code Related to Single-Use Carryout Bags

Staff Recommendation: Adopt Ordinance 3001-13.

### **PUBLIC COMMENTS**

Michael Goldman spoke regarding alleged violations of ethical guidelines by Vice Mayor Griffith and proposed a motion be made to censure him. Goldman reported the .mp4 video file for a previous Council meeting is not available on the City website.

Ann Davis spoke regarding the notification of the LinkedIn project and impacts of noise and dust on the surrounding neighborhood.

Steve Hoffman spoke regarding the ethics of the actions of a Councilmember and asked that he resign from office.

Holly Lofgren spoke regarding a pollster from a survey company who claimed to be a representative of City of Sunnyvale Public Safety and the City of Sunnyvale.

Misuk Park spoke regarding the registration of domain names.

Tap Merrick spoke regarding allegations of cybersquatting.

Kevin Jackson announced the upcoming opening of a bike share program in the region.

**PUBLIC HEARINGS/GENERAL BUSINESS**

2. RTC 13-212 Discussion and Possible Action to Modify the Compensation Plan for the City Manager

Councilmember Whittum excused the city manager and presented a report.

Public Hearing opened at 7:35 p.m.

Peter Cirigliano spoke in support of the modification to the compensation plan to retain the city manager.

Misuk Park spoke in support of the compensation plan for Gary Luebbers.

Glenn Hendricks requested Council continue the vote to the next meeting to allow more notice to the public.

Denise Olenak spoke in support of the city manager and encouraged a smooth transition.

Barbara Fukumoto spoke in support of the city manager and urged approval of the package.

Kevin Jackson spoke in support of retaining the city manager.

Tap Merrick spoke regarding previous increases in the city manager's salary and made recommendations regarding the housing allowance.

Steve Hoffman spoke in support of the city manager and asked Council to devise a strategy to prevent this type of issue in the future.

Mike Serrone spoke in support of the proposal and in support of Gary Luebbers.

Public Hearing closed at 7:55 p.m.

MOTION: Councilmember Whittum moved and Councilmember Davis seconded the motion to authorize the Mayor to execute an Amendment to the Agreement for Services between the City of Sunnyvale and the City Manager including the following measures:

- Employee will be reimbursed in an amount of approximately \$3,000 per month to accommodate temporary housing expenses;
- Employee will be reimbursed all reasonable expenses related to travel between Sunnyvale and Utah during the continuation of employment after October 5, 2013;
- Time traveled during regular work hours will be considered work time;
- Employee will receive a 2% salary increase, effective upon authorization by Council, in acknowledgment of the recent 2% increase in Employee's CalPERS contribution;
- Employee will have the option at time of retirement to accept the current benefits for retirement health insurance or reimbursement for other health insurance premiums, e.g., Medicare, in an amount not-to-exceed the city benefit;
- A one-time, non-PERSable payment in the amount of \$35,000 in recognition of excellent service to the City and lack of movement to control point when qualified after 6 months of service.

VOTE: 6 – 1 (Councilmember Meyering dissented)

3. RTC 13-209 Board and Commission Appointment

**Sustainability Commission (1 vacancy)**

1 term to 6/30/2014

John Cordes

VOTE: 4 - 0 - 3 (Mayor Spitaleri, Councilmembers Martin-Milius and Davis abstained)

Petya Kisyova

VOTE: 6 - 0 - 1 (Councilmember Moylan abstained)

James Lauth

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

Marla Vaughn

VOTE: 1 - 0 - 6 (Councilmember Meyering, Vice Mayor Griffith, Mayor Spitaleri, Councilmembers Moylan, Martin-Milius and Davis abstained)

City Clerk Kathleen Franco Simmons announced Petya Kisyova has been appointed to the Sustainability Commission for a term expiring June 30, 2014.

4. RTC 13-211 2012-7986 - Discussion and Possible Action on an Appeal by the Applicant of a Decision of the Planning Commission Denying a Design Review Permit for a New Two-Story Single-Family Home Resulting in 2,804 Square Feet and 53.5% Floor Area Ratio (FAR) Located at 726 San Miguel Avenue in an R-0 Zoning District (APN: 205-14-030)  
(Continued from August 13, 2013)

Councilmember Martin-Milius recused herself and left the room.

Planner Officer Trudi Ryan presented the staff report.

Applicant Jasbir Tatla provided information regarding the project and submitted written materials.

Jeannie Aiassa, applicant's architect, provided additional information regarding the project.

Public Hearing opened at 8:56 p.m.

Royal Cooper, neighbor, spoke in support of approval of the project.

Steve Hoffman spoke in support of approval of the project.

Public Hearing closed at 9 p.m.

MOTION: Councilmember Whittum moved and Mayor Spitaleri seconded the motion to grant the applicant's appeal and approve the Design Review with conditions, except removing condition PS-1.

VOTE: 2 - 4 (Councilmember Meyering, Vice Mayor Griffith, Councilmembers Moylan and Davis dissented, Councilmember Martin-Milius recused)  
Motion failed.

MOTION: Councilmember Moylan moved and Councilmember Davis seconded the motion to approve Alternative 1: Deny the Appeal and Uphold the Decision of the Planning Commission to Deny the Design Review and provide direction on the future designs as follows: regarding the Conditions of Approval, Condition PS-1 has two parts: Part (a) relating to a cap on the floor area ratio of 52% and Part (b) the guideline of how big the second story can be; the condition would be to eliminate Part (a) so that the direction of future designs would be: Meet PS-1 Part (b) and you don't have to meet PS-1 (a).

REVISED MOTION: Councilmember Moylan revised the motion and Councilmember Davis accepted the revision to refer the matter back to the Planning Commission to consider applying PS-1 (b).

VOTE: 6 - 0 (Councilmember Martin-Milius recused)

Councilmember Martin-Milius returned to the room and took her seat at the dais.

5. RTC 13-192      2013-7319 - Discussion and Possible Action on an Appeal by the Adjacent Neighbor of a Decision of the Planning Commission Approving a Design Review Application for an Addition to the First Story and a New Second Story on a Single-Family Home Resulting in 2,768 square feet and 49.7% Floor Area Ratio (FAR) located at 663 Toyon Avenue in an R-0 Zoning District (APN: 213-10-031)

Planning Officer Trudi Ryan presented the staff report and provided an aerial map of the property.

Public Hearing opened at 9:37 p.m.

Appellants Roger and Mary Horton spoke regarding violations of his privacy relative to the angle of the balcony overlooking his yard and the large size of the windows, and provided

photos.

Applicant Jagdeep Sahni provided information regarding the proposed project.

Hamed Balazadeh, applicant's architect, provided additional information regarding the proposed project.

Appellant Roger Horton stated they are satisfied with the suggested changes to use frosted glass on the window and move it up a little, but they would prefer no windows.

Public Hearing closed at 10:07 p.m.

**MOTION:** Councilmember Moylan moved and Vice Mayor Griffith seconded the motion to approve Alternative 1: Deny the appeal and uphold the decision of the Planning Commission to approve the Design Review with the conditions in Attachment B to the report.

**FRIENDLY AMENDMENT:** Councilmember Meyering offered a friendly amendment to require a lattice on the last two-and-a-half feet of the balcony facing the appellant to the height of eight feet.

Councilmember Moylan declined to accept the friendly amendment.

**VOTE:** 6 - 1 (Councilmember Whittum dissented)

Council recessed at 10:11 p.m.

Council reconvened at 10:25 p.m. with all Councilmembers present.

6. RTC 13-206 Discussion and Possible Action Regarding Request from Sunnyvale Community Services for Forgiveness of Approximately \$525,000 in Outstanding Community Development Block Grant (CDBG) Loan Debt

Housing Officer Suzanne Isé presented the staff report.

Public Hearing opened at 10:36 p.m.

Mary Bradley spoke in support of the request.

Marie Bernard, Executive Director of Sunnyvale Community Services, requested forgiveness of the current CDBG loan and interest, and provided information regarding the request.

Debbie Owens, President of the Sunnyvale Community Services, requested immediate and complete forgiveness of the CDBG loan and provided information regarding the services provided by the organization.

Cindy McGown, Second Harvest Food Bank, spoke in support of Sunnyvale Community Services and forgiveness of the loan.

Isabella Karabed, Senior Case Manager, Downtown Streets Team, requested Council forgive the CDBG loan.

Cynthia White, client at Sunnyvale Community Services, provided information regarding services the program provides and in support of approval of the request.

Andy Frazer spoke in support Sunnyvale Community Services and forgiveness of the CDBG loan, and provided a PowerPoint presentation.

Gustav Larsson, member of the Planning Commission speaking for himself, spoke in support of and provided information regarding option 1.

Glenn Hendricks provided information regarding option 1.

Public Hearing closed at 11:11 p.m.

**MOTION:** Councilmember Davis moved and Councilmember Moylan seconded the motion to approve Alternative 2: Agree to forgive the debt at a later date when the property is to be sold, leaving the City's current use restrictions in place on the property until transferred to replacement property or until 2043, whichever occurs first.

**FRIENDLY AMENDMENT:** Councilmember Meyering offered a friendly amendment to include a provision concerning the forgiveness of current interest accrual. Councilmember Davis declined to accept the friendly amendment.

**FRIENDLY AMENDMENT:** Councilmember Martin-Milius offered a friendly amendment to modify the motion to agree to review the forgiveness at a later date when the property needs to be sold. Councilmember Davis declined to accept the friendly amendment.

**AMENDMENT:** Councilmember Meyering moved to amend the motion and Mayor Spitaleri seconded the motion to include a provision to modify the loan agreement so that the accrual of interest ceases September 1, 2013.

**VOTE on AMENDMENT:** 3 - 4 (Vice Mayor Griffith, Councilmembers Moylan, Martin-Milius and Davis dissented)  
Motion to amend failed.

**VOTE on MAIN MOTION:** 2 - 5 (Councilmember Meyering, Councilmember Whittum, Vice Mayor Griffith, Mayor Spitaleri and Councilmember Martin-Milius dissented)  
Motion failed.

**MOTION:** Councilmember Meyering moved to amend the loan agreement between the City and the Sunnyvale Community Services as well as the promissory note to delete interest being owed on this loan beginning on September 1, 2013. Councilmember Davis raised a point of order and stated this motion as proposed has already been considered and voted on; it is improper to take it up again. Mayor Spitaleri ruled the motion out of order.

MOTION: Councilmember Meyering moved and Councilmember Whittum seconded the motion to amend the loan agreement between the City and Sunnyvale Community Services as well as the promissory note to delete the charging of interest and the accrual of interest starting September 16, 2013.

Councilmember Davis raised a point of order and objected on the same grounds.  
Mayor Spitaleri ruled the motion in order.

VOTE: 2 - 5 (Vice Mayor Griffith, Mayor Spitaleri, Councilmembers Moylan, Martin-Milius and Davis dissented)  
Motion failed.

MOTION: Councilmember Moylan moved and Mayor Spitaleri seconded the motion to approve Alternative 1: Forgive the debt now, including principal and interest accrued to date (\$525,000) as requested, leaving the City's use restriction and reversion of assets requirements in place on the property until transferred to a replacement property or until 2043, whichever occurs first.

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

MOTION: Councilmember Whittum moved and Moylan seconded the motion to bring back a modified version of Alternative 1: Forgive the debt now, including principal and interest accrued to date (\$525,000) as requested, leaving the City's use restriction and reversion of assets requirements in place on the property until transferred to a replacement property or until 2043, whichever occurs first, subject to staff researching and coming back with modification of the language to include terms that in the unlikely event Sunnyvale Community Services should cease to provide those services, the City would be entitled to and have priority to the equity remaining in that operation so that the City could have control over transferring it to some similar service.

VOTE: 5 - 2 (Vice Mayor Griffith and Councilmember Davis dissented)

MOTION: Councilmember Meyering moved to continue the remaining items on the agenda to the next Council meeting and make them number 1 and number 2 on the next Council meeting and this Council meeting be adjourned immediately.  
Motion died for lack of a second.

7. RTC 13-201 Discussion and Possible Action to Adopt Resolutions 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)

Planning Officer Trudi Ryan presented the staff report.

Public Hearing opened at 12:12 a.m.

Don Haislet spoke in support of holding a hearing and the principle of the annexation.

Sameen Bhola spoke in support of a public hearing on the annexation.

Sandra Ansen spoke in support of the prior speakers comments and stated she has an issue with the zoning, not the annexation.

Chandra Srivivasaiah expressed concerns regarding school crowding, decreased property values and increased traffic. Srivivasaiah spoke in favor of annexation after changing the zoning.

Steve Sarrette spoke in support of annexation.

Chen Peng stated she concurs with the concerns of previous speakers and spoke in support of a public hearing.

Holly Lofgren expressed concerns regarding zoning including traffic, school enrollment, height, the heritage tree at the site, and public notices.

Oliver Meng spoke in support of annexation and keeping the zoning the same.

Kiran Joshi concurred with the concerns of the previous speakers and expressed concerns regarding possible shading of his property and lowered property values.

Andy Frazer spoke in support of a public hearing on annexation and a public hearing on the consideration of rezoning on the same night.

Tap Merrick stated it's critical to have the zoning come before the annexation.

Aarthi Rishi expressed concerns regarding the annexation and encouraged looking at the zoning before annexation.

Martin Landzaat provided a PowerPoint presentation regarding the native oak tree on the Butcher property and asked the Council to enhance the tree preservation ordinance before annexing the property, and recommended the City purchase part or all of the Butcher property.

Andy Butcher spoke regarding the oak tree on the property and invited all to come look at it.

Glenn Hendricks, member of the Planning Commission speaking for himself, spoke in support of the annexation hearing and recommended those interested in the issue review the El Camino Precise Plan.

Public Hearing closed at 12:35 a.m.

**MOTION:** Councilmember Davis moved and Councilmember Moylan seconded the motion to approve Alternative 1: Adopt resolutions to set the next public hearing date and 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)

MOTION: Councilmember Whittum moved and Councilmember Meyering seconded the motion to put on the same agenda as the resolutions discussion of the general plan study including discussion of downzoning the property.

FRIENDLY AMENDMENT: Councilmember Meyering offered a friendly amendment to put consideration of downzoning on the agenda in September 2013. Councilmember Whittum accepted the friendly amendment.

FRIENDLY AMENDMENT: Vice Mayor Griffith offered a friendly amendment to change it from an agenda item to a study session. Councilmember Whittum accepted the friendly amendment.

MOTION RESTATED: Councilmember Whittum restated the motion, to have a study session September 10 discussing the matter of Butcher's Corner including downzoning/zoning and to have that study session prior to the annexation discussion.

FRIENDLY AMENDMENT: Councilmember Meyering recommended the study session be held in the Council Chambers to allow more room for more people. Councilmember Whittum accepted the recommendation.

VOTE: 7 - 0

8. RTC 13-198 Discussion and Possible Action to Approve the City's Response to the 2012-2013 Santa Clara Civil Grand Jury Final Report, "*Law Enforcement Public Complaint Procedures*"

Director of Public Safety Frank Grgurina presented the staff report.

Public Hearing opened at 12:48 a.m.

No speakers.

Public Hearing closed at 12:48 a.m.

MOTION: Councilmember Moylan moved and Vice Mayor Griffith seconded the motion to approve the City's response to the Santa Clara County Civil Grand Jury report as presented in Attachment A to the report.

VOTE: 6 - 0 (Councilmember Meyering absent)

9. RTC 13-202 Discussion and Possible Action to Vote for League of California Cities Peninsula Division Election of Officers

Senior Management Analyst Yvette Blackford presented the staff report.

Public Hearing opened at 12:49 a.m.

No speakers.

Public Hearing closed at 12:49 a.m.

MOTION: Councilmember Moylan moved and Vice Mayor Griffith seconded the motion to vote in support of all unopposed candidates to represent the City on this body.

Mayor Spitaleri stated his vote would not be a vote in support of Nancy Shepherd.

President: Chuck Page, Council Member, Saratoga  
Vice President: Kirsten Keith, Council Member, Menlo Park  
Secretary-Treasurer: Nancy Shepherd, Vice Mayor, Palo Alto  
Board Director: Marilyn Librers, Council Member, Morgan Hill  
At-Large – Santa Clara County: Jim Davis, Council Member, Sunnyvale  
At-Large – San Mateo County: Art Kiesel, Council Member, Foster City

VOTE: 6 - 1 (Councilmember Meyering dissented)

Following action on Item 9, Council took up and considered the pulled Consent Calendar items.

**COUNCILMEMBER REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE ASSIGNMENTS**

None.

**NON-AGENDA ITEMS & COMMENTS**

None.

**INFORMATION ONLY REPORTS/ITEMS**

- Tentative Council Meeting Agenda Calendar
- RTC 13-204 Location Change for Seven Seas Park Public Art “Under the Umbrella” (Information Only)
- RTC 13-207 Memo: Councilmember Meyering’s Question Regarding LinkedIn (Information Only)
- Joint Study Session Summary of July 23, 2013 - Discussion of Possible Amendment to Downtown Specific Plan Relating to Street Design for Mathilda Avenue between El Camino Real and Evelyn Avenue
- Study Session Summary of August 13, 2013 - Discussion of Nexus Study for Possible Affordable Housing Fee for Construction of New Rental Housing
- Draft Minutes of the Bicycle and Pedestrian Advisory Commission Meeting of August 15, 2013
- Draft Minutes of the Housing and Human Services Commission meeting of July 24, 2013
- Minutes of the Bicycle and Pedestrian Advisory Commission Meeting of July 18, 2013

**ADJOURNMENT**

Mayor Spitaleri adjourned the meeting at 12:54 a.m.

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Kathleen Franco Simmons, City Clerk

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Date