

**APPROVED MINUTES\***  
**SUNNYVALE CITY COUNCIL**  
**TUESDAY, OCTOBER 22, 2013**

**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  
Assistant City Manager Robert Walker  
Director of Finance Grace Leung  
Deputy Chief of Public Safety James Bouziane  
Director of Public Works Kent Steffens  
Director of Environmental Services John Stufflebean  
Director of Community Development Hanson Hom  
City Clerk Kathleen Franco Simmons

**SPECIAL ORDER OF THE DAY** – Mayor Spitaleri presented a proclamation regarding National Breast Cancer Awareness Month to Bobbe Smirni, New Frontiers in Prevention of Breast Cancer.

**PUBLIC ANNOUNCEMENTS**

Councilmember Martin-Milius announced the annual Family Fun Night event at the Columbia Neighborhood Center.

Councilmember Davis announced an opportunity for members of the community to serve on the committee to assist with the selection of a new city manager.

Grace Kay, Silicon Valley Leadership Group, announced the upcoming Turkey Trot.

Kevin Zwicke, CEO, Housing Trust Silicon Valley, spoke regarding the Turkey Trot fundraising event.

Michael Goldman announced the availability of candidate statements and forums on the League of Women Voters' web site and other websites relating to the election.

Linda Davis, League of Women Voters of Cupertino-Sunnyvale, announced the broadcast of replays of the candidate forum and availability of the videos and other information regarding the election online.

### **CONSENT CALENDAR**

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

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.N.

VOTE: 7 - 0

Council considered the pulled Consent Calendar items following Item 7.

1.A. Approval of Council Meeting Minutes of October 8, 2013

MOTION: Vice Mayor Griffith moved and Councilmember Davis seconded the motion to approve the Council Meeting Minutes of October 8, 2013 as amended.

VOTE: 6 - 1 (Councilmember Meyering dissented)

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

### **Fiscal Items**

1.C. RTC 13-255 Lists of Claims and Bills Approved for Payment by the City Manager – List Nos. 680 and 681

MOTION: Councilmember Davis moved and Councilmember Moylan seconded the motion to approve the list of bills.

VOTE: 6 - 1 (Councilmember Meyering dissented)

1.D. RTC 13-241 City of Sunnyvale Investment Report – 3rd Quarter 2013

Staff Recommendation: Receive and file the investment report.

- 1.E. RTC 13-252 Adopt the City's Investment Policy for Fiscal Year 2013/14

Staff Recommendation: Adopt the Investment Policy for FY 2013/14 as presented.

- 1.F. RTC 13-247 Approve Budget Modification No. 16 to Appropriate \$12,383 of Justice Assistance Grant Funding for Equipment

Public Hearing opened at 10:39 p.m.

No speakers.

Public Hearing closed at 10:39 p.m.

MOTION: Councilmember Meyering moved and Vice Mayor Griffith seconded the motion to approve Budget Modification No. 16 to appropriate \$12,383 of Justice Assistance Grant Program Funds to a new project, FFY 2013 Justice Assistance Grant.

VOTE: 7 - 0

- 1.G. RTC 13-257 Appropriation of \$11,510 of Covered California Grant Funds Through the California School Health Centers Association and Approval of Budget Modification No. 18

Staff Recommendation: Approve Budget Modification No. 18 to appropriate Covered California Grant Funds from California School Health Centers Association in the amount of \$11,510.

### **Contracts**

- 1.H. RTC 13-248 Award of Contract for the Purchase of SCBA Air Masks and Lapel Microphones (F14-30)

Staff Recommendation: Award a contract to Bauer Compressors, Inc. in the amount of \$114,177 and in substantially the same form as draft purchase order attached to the report, for MSA SCBA air masks and lapel microphones.

- 1.I. RTC 13-245 Award of Contract for the Purchase of Fire Protective Clothing, Equipment and Fire Safety Supplies (F14-28)

Staff Recommendation: Award a one-year contract to L.N. Curtis & Sons not-to-exceed budgeted amounts, for fire protective clothing, equipment and fire safety supplies, and authorize the City Manager to renew the contract for two additional one-year periods, provided that pricing and service remain acceptable to the City.

- 1.J. RTC 13-254 Authorization to Modify an Existing Contract for Library Printed Materials (F14-29)

Staff Recommendation: Approve modification of the existing Blanket Purchase Order with Ingram Library Services, Inc., in substantially the same form as the draft Change Order attached to the report, by increasing the not-to-exceed value from \$80,000 to \$120,000 and extending the end date to November 30, 2013.

- 1.K. RTC 13-246 Reject Proposals for Professional Services for Conceptual Design Study for the Improvement of Intersections (F13-65)

Staff Recommendation: Reject the two proposals received in response to Request for Proposals F13-65.

- 1.L. RTC 13-250 Award of Contract for the Purchase of Water Meters (F14-19)

Staff Recommendation: Award a one-year contract to Badger Meter, Inc. in substantially the same form as the draft blanket purchase order attached to the report, not-to-exceed budgeted amounts, for water meters and end points; and delegate authority to the City Manager to extend the contract by a period of up to one year to allow sufficient time to evaluate results of the pilot program, if pricing and service remain acceptable to the City.

**Other**

- 1.M. RTC 13-251 Adoption of a Resolution Establishing Financial Assurance for Postclosure Maintenance and Corrective Action Costs for the Sunnyvale Landfill and Approval of the Related Pledge of Revenue Agreement

Staff Recommendation: Adopt the resolution and authorize the City Manager to execute the Pledge of Revenue Agreement.

- 1.N. Ordinance No. 3003-13 Adopt Ordinance 3003-13 to Amending the Precise Zoning Plan and Zoning Districts Map to Create the Peery Park District

Councilmember Meyering stated he has a residence 496 feet from the west sidewalk on Mathilda, recused himself and left the dais.

Public Hearing opened at 10:40 p.m.

Pat Meyering spoke regarding existing building limitations in the development at Peery Park and expressed concerns regarding intensifying use, traffic flow and overcrowding, the need for corollary roads or a public transit system, a net loss of jobs in Sunnyvale and a net loss of service providers to residents.

Public Hearing closed at 10:43 p.m.

MOTION: Vice Mayor Griffith moved and Councilmember Moylan seconded the motion to adopt Ordinance 3003-13.

VOTE: 6 - 0 (Councilmember Meyering recused)

Following actin on this item, Council resumed hearing the remainder of public comment.

- 1.O. RTC 13-258 Award of a Contract for Analytical, Design and Support Services for Emergency Flow Management Improvements at the Water Pollution Control Plant (F13-62)

Staff Recommendation: Award a design contract, in substantially the same format as the draft attached to the report, and an amount not-to-exceed \$619,559; to CDM Smith for the

subject project, and authorize the City Manager to execute the contract when all necessary conditions have been met; and approve a 15% contract contingency in the amount of \$69,951.

### **PUBLIC COMMENTS**

Gary Latshaw, Sierra Club Loma Prieta Chapter, spoke in support of joining the Midpeninsula Regional Open Space District amicus brief and provided written materials.

Paula Wallis spoke in support of placing the issue of joining the Midpeninsula Regional Open Space District amicus brief on an upcoming agenda.

Arlene Goetze stated she is an advocate for no toxins for children and dogs and spoke regarding health and safety concerns relating to dog parks and requested testing the soil at Las Palmas Park.

Bob Kane spoke regarding communications he has sent to the City regarding the City Council's medical benefits.

Tap Merrick spoke regarding communications he has submitted alleging cyber-squatting and ethics violations.

Gina Senzatimore spoke regarding health and traffic safety concerns relating to the conversion of the East Weddell Apartments.

Linda Sell spoke in support of joining the Midpeninsula Regional Open Space District amicus brief and submitted written materials.

Michael Goldman spoke regarding the development of tall buildings in the City and provided a PowerPoint presentation.

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

2. RTC 13-243 Discussion and Possible Action on a Specific Plan Amendment to Consider Elimination of the Required Residential Frontage Road Along the West Side of S. Mathilda Avenue for Blocks 14, 15 and 16 of the Downtown Specific Plan (between Washington Avenue and Olive Avenue) and Approval of EIR Addendum - *Continued from October 8, 2013*

Director of Community Development Hanson Hom presented the staff report.

Public Hearing opened at 8:20 p.m.

Judith Owen Burns requested Council support the staff and Planning Commission recommendation and adopt the Downtown Specific Plan EIR addendum.

Jonathon Fearn spoke in support of the Planning Commission and Bicycle and Pedestrian Advisory Commission recommendation.

Kevin Jackson, Bicycle and Pedestrian Advisory Commission member speaking for himself, spoke in support of the Planning Commission recommendation.

James Manidakos, Chair, Bicycle and Pedestrian Advisory Commission, presented the recommendations of the Bicycle and Pedestrian Advisory Commission in support of the staff recommendation.

Public Hearing closed at 8:27 p.m.

MOTION: Councilmember Moylan moved and Vice Mayor Griffith seconded the motion to approve Alternative 1: Adopt the Downtown Specific Plan EIR addendum and resolution amending the Downtown Specific Plan to eliminate the requirement for a frontage road and adding a revised Mathilda Avenue cross section. Update related sections of the DSP to reflect the new plan.

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

3. RTC 13-244 Discussion and Possible Action to Appoint a Member to the Planning Commission

**Planning Commission (1 vacancy)**

1 Term to 6/30/2015

Durham, Ralph

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

Miller, Robert

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

City Clerk Kathleen Franco Simmons announced Ralph Durham has been appointed to the Planning Commission for a term expiring June 30, 2015.

4. RTC 13-242 2013-7140 Discussion and Possible Action to Introduce an Ordinance to Amend Chapter 19.58 of Title 19 of the Sunnyvale Municipal Code to Modify the Regulations and Procedural Requirements Regarding Large Family Child Care Homes (Study Issue) and to Find that the Project is Exempt from the California Environmental Quality Act

Planning Officer Trudi Ryan presented the staff report.

Public Hearing opened at 8:56 p.m.

Iris Ann Nelson, President, Sunnyvale Family Childcare Network, spoke in support of the recommendation.

Barbara Dwyer spoke in support of the need for limits in the number of hours children can be outside at Large Family Child Care Homes.

Steve Hoffman spoke regarding the need for giving consideration to neighbors of Large Family Child Care Homes and in support of the need for limits in the number of hours children can be outside.

Public Hearing closed at 9:09 p.m.

MOTION: Councilmember Whittum moved and Councilmember Moylan seconded the motion to approve Alternatives 1, 2 and 3.a.: 1) Find that the project is exempt from CEQA pursuant to guideline 15061(b)(3), 2) Introduce an ordinance for large family child care homes to establish a consistent application process that includes distance requirements and operational standards for new large family child care homes, and 3) Adopt the Planning Commission recommendation of Alternative 2 with the following modification: a. Include opportunity for child care providers to apply for a Use Permit for a waiver (to be granted by the Planning Commission) for LFCCH applications within 300 feet of another LFCCH in single family dwellings.

AMENDMENT: Councilmember Meyering moved to amend the motion with regard to requiring 3.c. so that 3.c. will read that the outdoor play area must be enclosed with a 6-foot high, solid, acoustically absorbing noise reduction fence unless all of the adjoining neighbors within 100 feet of the play area sign a waiver to exclude this requirement.  
Motion died lack of second.

City Clerk Kathleen Franco Simmons read the ordinance title.

VOTE: 6 - 1 (Councilmember Meyering dissented)

5. RTC 13-256 Discussion and Possible Action to Introduce an Ordinance Banning the Use and Sale of Expanded Polystyrene Food Containers and to Adopt a Negative Declaration of Environmental Impact

Director of Environmental Services Department John Stufflebean presented a brief report.

Public Hearing opened at 9:26 p.m.

John Cordes spoke in support of Alternative 1.

Dan Hafeman spoke in support of the ordinance.

Public Hearing closed at 9:27 p.m.

MOTION: Vice Mayor Griffith moved and Councilmember Moylan seconded the motion to approve Alternative 1: Adopt the Negative Declaration and introduce the ordinance.

City Clerk Kathleen Franco Simmons read the ordinance title.

VOTE: 7 - 0

6. RTC 13-249 2013-7468 - Discussion and Possible Action on the Appeal by a Councilmember of a Decision of the Planning Commission Approving Related Applications by Classic Communities (Applicant/Owner) for a Special Development Permit, Vesting Tentative Map and Mitigated Negative Declaration; 822-830 East Evelyn Avenue in the M3/ITR/R-3/PD Zoning District (APN: 209-14-007 & 209-14-011)

Planning Officer Trudi Ryan presented the staff report.

Public Hearing comments opened at 9:36 p.m.

Scott Ward, representing Classic Communities, provided information regarding the developer's conservative environmental standards.

Tim Costello, Tetra Tech, provided slides and information regarding Trichloroethene (TCE) concentration and groundwater monitoring on and near the subject property over time.

Scott Ward provided additional information relating to neighborhood outreach and mitigation of privacy impacts, disclosure of TCE contamination to buyers, and minimum setbacks.

Tim Costello, Tetra Tech, provided additional information Trichloroethene (TCE) concentrations.

Steve Hoffman expressed concerns regarding future legal liability risk to the City and issues of ethics with regard to contributions made to candidates by developers.

Scott Ward provided additional information regarding the project.

Public Hearing closed at 10:18 p.m.

**MOTION:** Councilmember Davis moved and Councilmember Whittum seconded the motion to approve Alternative 1: Deny the Appeal and uphold the decision of the Planning Commission to Adopt the Mitigated Negative Declaration, and Approve Special Development Permit and Vesting Tentative Map with the conditions of approval attached to the report.

Councilmember Davis disclosed that Mr. Ward and Mr. Mozart donated \$500 each to his campaign after his election.

**FRIENDLY AMENDMENT:** Councilmember Whittum offered a friendly amendment that the vapor infusion barrier which the gentleman has already agreed to be a condition of approval. Councilmember Davis accepted the friendly amendment.

**RESTATED MOTION:** Councilmember Davis moved and Councilmember Whittum seconded the motion to approve Alternative 1: Deny the Appeal and uphold the decision of the Planning Commission to Adopt the Mitigated Negative Declaration, and Approve Special Development Permit and Vesting Tentative Map with the conditions of approval attached to the report and in addition, as a condition of approval, implementation of the vapor barrier.

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

7. RTC 13-253 Discussion and Possible Action to Appoint a Councilmember to the Expressway Plan 2040 Policy Advisory Board

Director of Public Works Kent Steffens presented the staff report.

Public Hearing opened at 10:33 p.m.

No speakers.

Public Hearing closed at 10:33 p.m.

MOTION: Councilmember Whittum moved and Vice Mayor Griffith seconded the motion to appoint Councilmember Davis to the Expressway Plan 2040 Policy Advisory Board.

VOTE: 7 - 0

Following action on Item 7, Council took up and considered the pulled Consent Calendar items.

Following action on Item 1.N, Council resumed public comment at 10:43 p.m.

**PUBLIC COMMENT (continued)**

Steve Hoffman spoke regarding the delay in receiving public comment, the City's position on the issue of the amicus brief, and requested postponing taking action on development until after the election.

Robert Schewiesow spoke regarding health and noise concerns relating to a concrete company across the street from his residence and regarding the lack of sidewalk from the Lawrence Caltrain Station to the residential neighborhood.

Misuk Park spoke regarding candidate accusations from the podium, civility in Council meetings and Sunnyvale housing costs.

Larry Alba spoke in support of joining the amicus brief. Alba also suggested Councilmembers who received campaign contributions from the developer should not have voted on RTC 13-249.

Tap Merrick provided information and written materials regarding earlier comments relating to the sale of the Raynor Park facility, the Kaiser left-turn issue, and a misinterpretation of the pension issue.

Mayor Spitaleri stated the Council will from this point forward not engage in discussing items not on the agenda pursuant to the Brown Act.

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

Vice Mayor Griffith reported a meeting of the Cities Association of Santa Clara County relating to the trend of increasing crime and regional actions being taken to get a handle on it.

Councilmember Davis reported his attendance at a meeting of the VTA Policy Advisory Board, Joint Cities Working Group Stevens Creek Trail, BPAC as Council Liaison, 60-year anniversary of the Cupertino Co-op Nursery, and met with Boy Scouts from Troop 463 to talk about civic involvement.

Councilmember Martin-Milius reported her attendance at a meeting of the Stevens Creek Trail Committee, the Seven Seas Park dedication, and the staff talent show.

**NON-AGENDA ITEMS & COMMENTS**

MOTION: Councilmember Whittum moved and Councilmember Meyering seconded the motion to place the amicus brief subject on an agenda and hold a meeting on October 29, 2013.

RESTATED MOTION: Councilmember Whittum moved and Councilmember Meyering seconded the motion to place the amicus brief subject on a closed session agenda on October 25, 2013 at 12:30 p.m. prior to the scheduled special meeting.

VOTE: 6 - 1 (Councilmember Davis dissented)

Councilmember Whittum stated he spoke with a member of the public regarding the speed limit on Fair Oaks and expressed interest in looking at changing the speed limit.

**INFORMATION ONLY REPORTS/ITEMS**

- Tentative Council Meeting Agenda Calendar
- Study Session Summary of September 24, 2013 - Overview of Proposed Amendments to Moffett Park Specific Plan and Development Agreement for the Proposed Moffett Place Office Campus (1.8 million square feet) Located between Mathilda Avenue and Borregas Avenue North of Moffett Park Drive
- Joint Study Session Summary of October 1, 2013 - Dog Park at Las Palmas Park
- Draft Minutes of the Parks and Recreation Commission Meeting of September 11, 2013
- Draft Minutes of the Arts Commission Meeting of September 18, 2013
- Draft Minutes of the Board of Library Trustees Meeting of October 7, 2013
- Draft Minutes of the Housing and Human Services Commission Meeting of September 25, 2013

**ADJOURNMENT**

Mayor Spitaleri adjourned the meeting at 11:32 p.m.

\_\_\_\_\_  
Kathleen Franco Simmons, City Clerk

\_\_\_\_\_  
Date