

DRAFT MINUTES*
SUNNYVALE CITY COUNCIL
TUESDAY, NOVEMBER 19, 2013, 7 P.M.

CALL TO ORDER

Vice Mayor Griffith called the meeting to order in the Council Chambers.

SALUTE TO THE FLAG

Vice Mayor Griffith led the salute to the flag.

ROLL CALL

PRESENT:

Vice Mayor Jim Griffith
Councilmember Christopher Moylan
Councilmember David Whittum
Councilmember Pat Meyering
Councilmember Tara Martin-Milius
Councilmember Jim Davis

ABSENT:

Mayor Anthony (Tony) Spitaleri (Excused)

STAFF PRESENT:

City Manager Gary Luebbers
City Attorney Joan Borger
Assistant City Manager Robert Walker
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 Environmental Services John Stufflebean
Director of Library and Community Services Lisa Rosenblum
City Clerk Kathleen Franco Simmons

CLOSED SESSION REPORT FOR OCTOBER 25, 2013

*Closed Session pursuant to Government Code Section 54956.9 – Conference with Legal Counsel
– Existing Litigation*

Councilmember Moylan reported a Closed Session was held on October 25, 2013 to consider a request to join an amicus brief in the case of No Toxic Air v. Santa Clara County, dealing with the legal standard for determining the boundaries of when certain mining uses are vested.

**Pending Council Approval*

Councilmember Moylan reported Council voted 5 – 1 with Councilmember Davis dissenting and Councilmember Meyering absent, to conditionally approve the request subject to the City Attorney’s review of the brief for consistency with the City’s interests. Councilmember Moylan reported the City joined the amicus brief, which was filed with the Court of Appeal on November 12.

PUBLIC ANNOUNCEMENTS

Dave Jones announced a community bike ride in support of “Movember.”

CONSENT CALENDAR

Councilmember Meyering pulled Items 1.A, 1.C, 1.E and 1.F and requested to record a No vote on Items 1.J and 1.K.

MOTION: Councilmember Moylan moved and Councilmember Martin-Milius seconded the motion to approve the Consent Calendar with the exception of Items 1.A, 1.C, 1.E and 1.F.

VOTE: 6 – 0 (Mayor Spitaleri absent)

1.A. Approval of Council Meeting Minutes of October 22, 2013

MOTION: Councilmember Moylan moved and Councilmember Davis seconded the motion to approve the Council Meeting Minutes of October 22, 2013.

VOTE: 5 - 1 (Councilmember Meyering dissented, Mayor Spitaleri absent)

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

Fiscal Items

1.C. RTC 13-271 Lists of Claims and Bills Approved for Payment by the City Manager - Nos. 682, 683, 684 and 685

Public Comment opened at 7:12 p.m.

Tap Merrick suggested the Council develop a standard billing rate for legal fees.

Public Comment closed at 7:14 p.m.

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

VOTE: 5 - 1 (Councilmember Meyering dissented, Mayor Spitaleri absent)

1.D. RTC 13-264 Approve Budget Modification No. 17 to Appropriate \$19,875 of Kaiser Permanente South Bay Community Benefit Program Grant Funds for Development of the Columbia Neighborhood Center Fitness Room

Staff Recommendation: Approve Budget Modification No.17 to appropriate Kaiser Permanente South Bay Community Benefit Program grant funds in the amount of \$19,875 to a new project, Enhanced Fitness Programs.

- 1.E. RTC 13-263 Approve Budget Modification No. 19 to Appropriate \$18,000 of Council on Aging Silicon Valley Grant Funds for Care Management Services

MOTION: Councilmember Meyering moved and Councilmember Davis seconded the motion to use the grant funds to increase care management services to seniors by 540 hours rather than absorbing the grant money to repay City funds that are being expended.

Public comment opened and closed at 7:13 p.m. with no speakers.

MOTION: Councilmember Whittum moved to table the motion to the next meeting. Motion died for lack of second.

VOTE: 1 - 5 (Councilmember Whittum, Vice Mayor Griffith, Councilmembers Moylan, Martin-Milius, and Davis dissented, Mayor Spitaleri absent)
Motion failed.

MOTION: Councilmember Moylan moved and Councilmember Martin-Milius seconded the motion to approve Budget Modification No. 19 to Appropriate Council on Aging Silicon Valley grant funds in the amount of \$18,000 to Project 829640 Care Management Enhancement.

VOTE: 6 – 0 (Mayor Spitaleri absent)

Contracts

- 1.F. RTC 13-272 Award of Bid No. PW14-02 for ADA Curb Ramps Installation 2013-14 and Finding of CEQA Categorical Exemption

Public comment opened and closed at 7:23 p.m. with no speakers.

MOTION: Councilmember Moylan moved and Councilmember Martin-Milius seconded the motion to award a contract in the amount of \$378,300 to Spencon Construction Inc., for the subject project, and authorize the City Manager to execute the contract when all the necessary conditions have been met; approve an 18.5% construction contingency in the amount of \$69,986; and make a finding that the project is categorically exempt from CEQA pursuant to Class 1, Section 15301(c) and (d).

VOTE: 6 - 0 (Mayor Spitaleri absent)

- 1.G. RTC 13-265 Award of Contract for an Aerial Chipper Truck (F14-27)

Staff Recommendation: Award a contract in the amount of \$177,323, in substantially the same form as the draft purchase order attached to the report, to Altec Industries, Inc. for one aerial chipper truck.

- 1.H. RTC 13-269 Award of Contract for Four Dump Trucks (F14-24)

Staff Recommendation: Award a contract in the amount of \$289,501, in substantially the same form as the draft purchase order attached to the report, to Big Valley Ford for four dump trucks.

- 1.I. RTC 13-273 Award of Contracts for Library Printed Materials (F14-11)

Staff Recommendation: Award a three-year contract to Ingram Library Services, Inc. in substantially the same form as the draft blanket purchase order attached to the report, not-to-exceed budgeted amounts, for adult and juvenile printed materials; and delegate authority to the City Manager to extend the contract for two additional one-year periods, not-to-exceed annual budgeted amounts, if pricing and service remain acceptable to the City.

Personnel

- 1.J. RTC 13-270 Adoption of the Interim Findings and Recommendations between the City of Sunnyvale and Sunnyvale Employees Association (SEA) and Approval of Budget Modification No. 20

MOTION: Councilmember Moylan moved and Councilmember Martin-Milius seconded the motion to Approve the interim findings and recommendations dated October 8, 2013 and approve Budget Modification No. 20.

VOTE: 5 – 1 (Councilmember Meyering dissented, Mayor Spitaleri absent)

Other

- 1.K. ORDINANCE NO. 3004-13 Adopt Ordinance No. 3004-13 Amending Chapter 19.58 Concerning Large Family Child Care Homes of Title 19 (Zoning Code) of the Sunnyvale Municipal Code

MOTION: Councilmember Moylan moved and Councilmember Martin-Milius seconded the motion to Adopt Ordinance 3004-13.

VOTE: 5 –1 (Councilmember Meyering dissented, Mayor Spitaleri absent)

- 1.L. ORDINANCE NO. 3005-13 Adopt Ordinance No. 3005-13 Adding Chapter 5.39 (Environmentally Acceptable Food Containers and Service Ware) of Title 5 (Business Licenses and Regulations) of the Sunnyvale Municipal Code Related to Polystyrene Food Containers and Service Ware

Staff Recommendation: Adopt Ordinance 3005-13.

- 1.M. RTC 13-279 Approval of a Resolution Supporting the City's Application for a Safe, Clean Water Grant from the Santa Clara Valley Water District in the amount of \$37,500

Staff Recommendation: Approve the Resolution and authorize staff to apply for a Safe, Clean Water Grant for \$37,500.

PUBLIC COMMENTS

Vice Mayor Griffith stated that State Law prohibits Council from discussing items not listed on the agenda other than to ask questions of clarification of fact. Vice Mayor Griffith stated the Mayor or Mayor Pro Tem will follow up at the end of Public Comments with any action items or further

comments, and any other Council comments will be heard under Non-Agenda Items and Comments at the end of the meeting.

Kira Od spoke regarding wildlife she has observed at the landfill and levees adjacent to the Water Pollution Control Plant and spoke in opposition to development of the area.

Arlene Goetze, advocate for no toxins for children or dogs, spoke regarding the need to test the soil at the dog park.

Tap Merrick proposed a study issue to review the City's Code of Ethics and Candidate Code of Ethics to either eliminate it or create an impartial, outside arbiter to resolve ethics violations with enforceable penalties.

Deborah Marks inquired about the status of the urban forest management plan.

Tina Brown requested the City repair the damaged sound wall on Sunnyvale-Saratoga Road.

Steve Kelly, Listing Agent, spoke regarding the damaged sound wall on Sunnyvale-Saratoga Road, requested it be fixed quickly, and submitted a set of photos for Council to review.

Harriet Rowe spoke regarding Council excellence and expressed words of appreciation to outgoing, re-elected and newly elected Councilmembers.

Larry Mattix expressed concerns regarding Measure C.

PUBLIC HEARINGS/GENERAL BUSINESS

2. RTC 13-275 Discussion and Possible Action Regarding Approval of the Purchase and Sales Agreement for Raynor Activity Center Located at 1500 Partridge Avenue and a Joint Use Agreement for the Raynor Park Open Space Area and Adoption of a Finding that the Purchase and Sales Agreement Does not Constitute a Project Under the California Environmental Quality Act

Director of Public Works Kent Steffens presented the staff report.

Public Hearing opened at 8:09 p.m.

Jill Shanmugasundaram, Chair of Board of Library Trustees, conveyed the Trustees' unanimous support of the recommendation and provided data on square footage per capita of area libraries.

Leigh Zerboni spoke in opposition to the proposed joint use agreement for Raynor Park open space and in support of open space for casual use.

Rupert Brauch spoke in opposition to the joint use agreement for Raynor Park open space.

Judy Fernandez, President, Lakewood Village Neighborhood Association, introduced three members of the board and spoke in favor of a branch library in their neighborhood.

Doug Ericson spoke in favor of maintaining consistency with the General Plan.

Leah Lane spoke regarding the benefits of having a branch library to senior citizens and the unemployed in the neighborhood.

Dr. Christine Koltermann, President, Santa Clara Unified School District Board of Education, spoke regarding increases in student population in the district and the need for more classrooms. Dr. Koltermann requested the City start meeting with the Santa Clara Unified School District on a regular basis.

Nancy Smith, Immediate Past President of the Rotary Club of Sunnyvale, spoke in support of the branch library project.

Sherry Adams, founder and Senior Vice President of Stratford School, spoke in support of approval of the Raynor proposal and stated their intention to work in partnership regarding the open space.

Clay Stringham, representing Stratford Schools, spoke in support of the proposal, highlighted improvements to the structure and recreational fields, and stated their sensitivity to neighborhood concerns.

Tuky Reyes spoke in support of a branch library at Lakewood Park.

Danielle Maddox, President, Friends of the Sunnyvale Library, urged completion of the Raynor sale and the branch library at Lakewood. Maddox stated their commitment to contribute to the branch library, and urged consideration of a future plan for the main library.

David Lieberman spoke in opposition to the joint use agreement and requested the issue of the sale of the activity center be separated from the branch library issue. Lieberman also expressed concerns regarding the traffic impacts of a school to the neighborhood.

Kim Jacksteit spoke in support of the branch library in North Sunnyvale and the Stratford School proposal.

Shane Jacksteit spoke in support of the Stratford School proposal and the branch library.

Eleanor Hansen requested Council find another piece of land to turn into a park and regarding use of parcel one in the joint use agreement.

Tap Merrick spoke in opposition to the Raynor proposal and the joint use agreement.

Preeti Ray expressed concerns regarding the traffic impacts of a private school in the Birdland neighborhood.

Erin Mulcahy spoke in opposition to the sale of Raynor and the joint use agreement.

Larry Alba spoke in opposition to the sale of the Raynor property and recommended leasing the property.

Mike Kurtz spoke in opposition to the sale of Raynor and the joint use agreement for open space for the purpose of providing a library in a different neighborhood, and requested consideration be given to using the property for the Santa Clara Unified School District.

Misuk Park, speaking for the Arts Commission, conveyed the commission's support of the branch library and speaking for herself, expressed sensitivity to the Birdland neighborhood. As a Board member for Full Circle Farm, Park reminded the residents of Birdland that the farm is open every day but Saturday.

Public Hearing closed at 9:11 p.m.

MOTION: Councilmember Davis moved and Councilmember Moylan seconded the motion to approve Alternatives 1, 2 and 4: 1) Find that approval of the Purchase and Sales Agreement for the Raynor Activity Center is not a project under CEQA and direct staff to conduct further environmental analysis as part of the use permit process; 2) Authorize the City Manager to execute the Purchase and Sales Agreement between the City of Sunnyvale and Stratford School, Inc. for the sale of the Raynor Activity Center located at 1500 Partridge Avenue; 4) Direct that upon close of escrow for the Raynor property that proceeds from the sale be used as follows: a.) Provide \$11.5 million in funding for the current capital project for design, construction, and startup costs of a new branch library located at Lakewood Park; and b.) Use proceeds of \$135,000 to reimburse the General Fund for commercial real estate consulting services with expertise in negotiated sales of public facilities; and c.) Use a portion of the proceeds in the amount of \$50,000 for closing costs related to the sale of the Raynor Activity Center; and d.) Use remaining proceeds of approximately \$2.37 million for design and construction of the Washington Pool Expansion Project advancing its schedule by two years to start design in Fiscal Year 2014/15; and e.) Upon recordation of the Raynor Park Parcel Map, direct staff to transfer \$130,000 from the Water Utility Fund to the General Fund Reserve for Capital Improvement Projects.

VOTE: 4 - 2 (Councilmembers Meyering and Whittum dissented, Mayor Spitaleri absent)

MOTION: Councilmember Davis moved to direct staff to return to negotiate a new lease agreement putting the residents of Sunnyvale in first place in the use agreement of Raynor Park property and that the connecting park use and school enrollment not be a priority. Motion died for lack of a second.

MOTION: Councilmember Moylan moved and Councilmember Martin-Milius seconded the motion to approve Alternative 3: Authorize the City Manager to execute the Joint Use Agreement between the City of Sunnyvale and Stratford School, Inc. for the use of Raynor Park.

VOTE: 3 - 3 (Councilmembers Meyering, Whittum and Davis dissented, Mayor Spitaleri absent)
Motion failed.

MOTION: Councilmember Moylan moved and Councilmember Martin-Milius seconded the motion to continue consideration of the joint use agreement, subject to any changes staff might be able to achieve in the interim, to the next Council meeting.

VOTE: 3 - 3 (Councilmembers Meyering, Whittum and Davis dissented, Mayor Spitaleri absent)
Motion failed.

MOTION: Councilmember Whittum moved to direct staff to schedule with the clerk of the Santa Clara Unified School District a joint meeting in which this topic can be discussed. Motion died for lack of second.

MOTION: Councilmember Martin-Milius moved to continue this discussion to the next meeting.

Councilmember Meyering raised a point of order stating the motion has already been made and failed.

MOTION: Councilmember Davis moved and Councilmember Whittum seconded the motion to direct staff to renegotiate the use agreement with Stratford School.

VOTE: 6 - 0 (Mayor Spitaleri absent)

Council recessed at 9:48 p.m.

Council reconvened at 10:02 p.m. with all present, except Mayor Spitaleri.

3. RTC 13-276 2013-7448 Discussion and Possible Action on an application by Christensen Holdings, LP for a Mitigated Negative Declaration and: USE PERMIT to construct two new office buildings on a 9.27-acre site located at 433 N. Mathilda Avenue in an M-S and an M-S/POA Zoning District (APN: 165-28-13 and 165-28-23) with a total of 213,126 square feet of floor area, and a Floor Area Ratio of 52.8%

Planning Officer Trudi Ryan presented the staff report.

Councilmember Martin-Milius disclosed she met with the applicant.

Public Hearing opened at 10:20 p.m.

Gavin Christensen, Applicant, Christensen Holdings, provided information regarding the project.

John Cordes spoke regarding traffic and transportation impacts, expressed support of the underground parking, recommended LEED Platinum and expressed concerns regarding housing to development ratios.

Public Hearing closed at 10:31 p.m.

MOTION: Councilmember Moylan moved and Councilmember Davis seconded the motion to approve Alternative 1: Adopt the Mitigated Negative Declaration and approve the Use Permit with the conditions attached to the report.

Councilmember Whittum offered a friendly amendment that on the left turn lane after the TIF has been expended, overage to be assessed on a fair share basis.

Vice Mayor Griffith offered a substitute friendly amendment to return the issue to Council if it determines that the TDM is insufficient to cover the cost for a determination.

Councilmember Whittum withdrew his friendly amendment.

Councilmember Moylan accepted Vice Mayor Griffith's friendly amendment.

VOTE: 5 - 1 (Councilmember Meyering. dissented, Mayor Spitaleri absent)

4. RTC 13-268 Discussion and Possible Action to Adopt a Resolution of Findings and Introduce Ordinances for Adoption by Reference of the 2013 California Building Codes with Local Amendments and to Consider Finding that the Action is Exempt from the California Environmental Quality Act

Director of Community Development Hanson Hom presented the staff report.

Public Hearing opened at 10:53 p.m.

No speakers.

Public Hearing closed at 10:53 p.m.

MOTION: Councilmember Moylan moved and Councilmember Martin-Milius seconded the motion to approve Alternative 1: Adopt the resolution of local findings and approve the first reading of the ordinances adopting the 2013 California Building Codes.

City Clerk Kathleen Franco Simmons read the ordinance titles.

VOTE: 6 - 0 (Mayor Spitaleri absent)

5. RTC 13-278 Discussion and Possible Action to Adopt a Resolution Finding and Determining a Need for Modifications to the 2013 California Fire Code and to Introduce an Ordinance Adopting by Reference the 2013 California Fire Code with Local Amendments, Deleting Chapters 16.53 Toxic Gas and 16.54 Standards for High Rise Buildings and Modifying Title 20 Hazardous Materials and to Consider Finding that the Action is Exempt from the California Environmental Quality Act

Director of Public Safety Frank Grgurina presented the staff report and Fire Marshall Lynne Kilpatrick provided additional information.

Public Hearing opened at 11:04 p.m.

No speakers.

Public Hearing closed at 11:04 p.m.

MOTION: Councilmember Moylan moved and Councilmember Davis seconded the motion to approve Alternative 1: Adopt the resolution of local findings and introduce the ordinances adopting the 2013 California Fire Code with amendments as Chapter 16.52 of the Sunnyvale Municipal Code, deleting Chapters 16.53 (Toxic Gas) and 16.54 (Standards for High Rise Buildings), and modifying Title 20 to retain only those requirements pertaining to the establishment and authority of the Consolidated Unified Program Agency (CUPA).

City Clerk Kathleen Franco Simmons read the ordinance titles.

VOTE: 5 - 1 (Councilmember Meyering dissented, Mayor Spitaleri absent)

6. RTC 13-277 Discussion and Possible Action Regarding Approval of SMaRT Station® Operations Request for Proposals

Director of Environmental Services Department John Stufflebean presented the staff report.

Public Hearing opened at 11:14 p.m.

No speakers.

Public Hearing closed at 11:14 p.m.

MOTION: Councilmember Moylan moved and Councilmember Davis seconded the motion to approve Alternative 1: Approve the Request for Proposals for the Operation of the Sunnyvale Materials Recovery and Transfer Station.

VOTE: 6 - 0 (Mayor Spitaleri absent)

COUNCILMEMBER REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE ASSIGNMENTS

Councilmember Davis reported his attendance at the employee Years of Service Breakfast and the Elected Officials Leadership Academy in South San Francisco. Davis reported he was elected Vice Chair of the County Expressway Commission. Davis reported his attendance at the Chick-fil-A grand opening, a Housing Community Longevity event in Cupertino, the County Lawrence Expressway Workshop, an American Leadership Forum in San Jose, a Tea for a Cause event for Adult Day Care, the National League of Cities Conference in Seattle, a Quarterly Neighborhood Association meeting and a meeting of the County Emergency Operations Council.

Vice Mayor Griffith reported his attendance at a meeting of the Cities Association of Santa Clara County in which he was elected Second Vice President of the Executive Committee and a presentation was made by Santa Clara County advocating for Cities to adopt electronic vehicle charger wiring requirements in all of their buildings.

NON-AGENDA ITEMS & COMMENTS

Councilmember Whittum requested staff coordinate with Santa Clara Unified School District staff on a joint meeting with their board in the not too distant future.

City Manager Luebbers reported multiple requests have been made and staff will try again.

Councilmember Moylan reported he submitted a trip report for the League of California Cities Conference which is available in Information Only reports.

Vice Mayor Griffith reported his attendance at the opening of the Mercedes Benz R&D facility.

INFORMATION ONLY REPORTS/ITEMS

- Tentative Council Meeting Agenda Calendar
- Summary of Special Council Meeting of October 25, 2013 - Follow Up: Building Collaboration and Improving Communications
- Draft Minutes of the Bicycle and Pedestrian Advisory Commission Meeting of October 17, 2013
- League of California Cities Conference Trip Report – Councilmember Moylan

ADJOURNMENT

Vice Mayor Griffith adjourned the meeting at 11:21 p.m.