

**CITY OF MORGAN HILL  
JOINT REGULAR CITY COUNCIL AND  
REGULAR REDEVELOPMENT AGENCY MEETING  
MINUTES – JUNE 3, 2009**

**CALL TO ORDER**

Mayor/Chairman Tate called the meeting to order at 7:00 p.m.

**ROLL CALL ATTENDANCE**

Present: Council/Agency Members: Lee, Librers, Sellers, and Mayor/Chairman Tate  
Absent: Council/Agency Member Carr

**DECLARATION OF POSTING OF AGENDA**

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

**SILENT INVOCATION**

**PLEDGE OF ALLEGIANCE**

**PRESENTATION**

Mayor Tate indicated that the City of Morgan Hill has a sister city relationship with four different cities around the world. During his vacation, he had the opportunity to visit Morgan Hill's sister city of Headford, Ireland. Last year, Mizuho Town, Japan sent some students to Morgan Hill for a summer program. He stated that this summer, the Morgan Hill Sister Cities Committee will be sending students to visit Mizuho Town.

Brian Shiroyama, Sister Cities Member, addressed the Student Exchange Program that would send middle school students to Morgan Hill's sister city of Mizuho Town, Japan. The exchange program is possible due to successful fundraising activities.

Merv Little, Sister Cities Committee member, addressed the fundraising activities that have been conducted to assist sending the exchange students to Mizuho Town, Japan. He indicated that students developed a slide program and made presentations at the service clubs in Morgan Hill. The students have been successful in raising funds from the service clubs, other fundraising efforts, and donations. The Sister Cities Committee estimated that approximately \$20,000 would be needed to send the students to Mizuho Town and that they have raised approximately \$15,000, but still have a ways to go. He informed the Council that they have restaurant nights and that they have another one coming up at Panda Express to assist with fundraising efforts.

Cindy Van Rhine, chaperon for the trip, informed the Council that the students have conducted community outreach at Art a la Cart. She introduced 6 of the 8 middle school students who would be traveling to Mizuho Town, Japan. She addressed the activities that will occur during the exchange program; including a service organizational exchange. She announced that they are still looking for donations to help bridge the financing gap.

Mr. Shiroyama informed the Council that 7 delegates from Mizuho Town will be visiting Morgan Hill and will be attending the Fourth of July festivities; including a reception to be held at the Morgan Hill Buddhist Community Center on July 3 at noon. He invited the Council to attend this reception.

### **CITY COUNCIL REPORTS**

Council Member Lee stated that she was going to report on her attendance at the Sister Cities Committee meeting held Monday night, but felt that the report presented this evening about the Mizuho Town student exchange program was a good report. She indicated that last week, the Council approved a change order for the skate park to install tubular steel fencing instead of a chain link fence for security reasons. She stated that she was surprised to find that the fencing was on site with some of the fencing already installed the day following Council approval of the change order. She contacted the Public Works Director and the City Manager to determine what had transpired. According to the Public Works Director, the fence had been ordered at least two weeks earlier and that this was confirmed by the City Manager via a chronology he prepared after she spoke to him. It was communicated to her that staff had to order the fence at that time because it takes three weeks to deliver following the order being placed. The order occurred on May 13 and that the change order was scheduled for Council review/approval for the May 20 meeting, but was delayed to May 27 due to the cancellation of this meeting. She indicated that installation began on May 26 and that based on her observation, the installation was completed on June 1 or June 2. Based on this timeframe, had the City ordered the fence on May 28, the day following Council approval of the change order, the materials would have arrived on June 18 with installation to be completed by June 26. She acknowledged that this would have been a tight timeframe for a June 27 opening, but felt that it was doable. She said that she can understand the need to keep projects on schedule, and to anticipate the direction the Council may take. She felt that her question was a legitimate question as the materials had already been ordered and delivered, and that this was not mentioned during the staff report. She said that it would not have occurred to her that she was voting on an item that had already been completed. She felt that it begs a broader question of whether staff is taking direction from the Council, or whether the Council was merely rubber stamping the wants of staff. She did not know if these types of actions have occurred in the past, and stated that she was not comfortable with these actions. She requested a report be presented at a future Council meeting to identify how often this/these actions occur.

### **CITY MANAGER'S REPORT**

City Manager Tewes indicated that he did not have a report to present this evening.

### **CITY ATTORNEY'S REPORT**

City Attorney Wan stated that he did not have a report to present this evening.

### **OTHER REPORTS** - None

### **PUBLIC COMMENT**

Mayor/Chairman Tate opened the floor to public comment for items not appearing on this evening's

agenda. No comments were offered.

## ***City Council and Redevelopment Agency Action***

### **ADOPTION OF AGENDA**

**Action:** *On a motion by Council/Agency Member Lee and seconded by Mayor Pro Tempore/Vice-chairman Sellers, the Council/Agency Board, on a 4-0 vote with Council/Agency Member Carr absent, **Adopted** the agenda as printed.*

## ***City Council Action***

### **CONSENT CALENDAR:**

**Action:** *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Lee, the City Council, on a 4-0 vote with Council Member Carr absent, **Approved** Consent Calendar Items 1-5 as follows:*

1. **WATER CONSERVATION MEMORANDUM OF UNDERSTANDING WITH SANTA CLARA VALLEY WATER DISTRICT**

**Action(s):** ***Authorized** the City Manager to Execute the Memorandum of Understanding (MOU) with the Santa Clara Valley Water District, Subject to the Inclusion of Funding in the Adopted Fiscal Year 2009-10 Budget.*

2. **SUMMARY VACATION OF A PORTION OF BISCEGLIA AVENUE (APN 817-01-042 & 052)**

**Action(s):** *1) **Adopted** Resolution No. 6246, Declaring Summary Vacation of a Portion of Bisceglia Avenue (APN 817-01-042 & 052); 2) **Directed** the City Clerk to File a Certified Copy of the Resolution in the Office of the County Recorder; and 3) **Authorized** the City Manager to Sign the Quitclaim Deed of the Vacated Area on Behalf of the City and **Directed** the City Clerk to File in the Office of the County Recorder.*

3. **ADOPT ORDINANCE NO. 1934, NEW SERIES**

**Action(s):** ***Waived** the Reading, and **Adopted** Ordinance No. 1934, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CERTAIN SECTIONS OF CHAPTER 8.48 (Burglary And Robbery Alarm Regulations) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL TO REQUIRE REGISTRATION OF ALARM SYSTEMS, PAYMENT OF FEES FOR REGISTRATION AND FALSE ALARMS AND PROVIDING FOR FINES AND PENALTIES FOR NUISANCE ALARMS AND EXCESSIVE FALSE ALARMS.***

4. **ADOPT ORDINANCE NO. 1935, NEW SERIES**

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**Action(s):** **Waived** the Reading, and **Adopted** Ordinance No. 1935, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DELETING CHAPTER 2.56 (Architectural And Site Review Board) OF TITLE 2 (Administration And Personnel) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL TO DIS-ESTABLISH THE ARCHITECTURAL AND SITE REVIEW BOARD (“ARB”), AMENDING VARIOUS OTHER SECTIONS OF THE MUNICIPAL CODE TO TRANSFER POWERS AND DUTIES OF THE ARB, INCLUDING CHAPTER 18.74 (Design Review), AMENDING CERTAIN DESIGN, REVIEW AND NOTICING STANDARDS AND EXTENDING CERTAIN DESIGN PERMITS.**

5. **ADOPT ORDINANCE NO. 1936, NEW SERIES**

**Action(s):** **Waived** the Reading, and **Adopted** Ordinance No. 1936, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 12.20.095 (Use Of Skate Park Facility) AND SECTION 12.20.100 (Violation – Penalty) OF CHAPTER 12.20 (City Parks And Recreation Buildings) OF TITLE 12 (Streets, Sidewalks And Public Places) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGULATING USE OF THE SKATE PARK FACILITY AND PROVIDING FOR ADMINISTRATIVE FINES FOR VIOLATIONS OF CHAPTER 12.20 (City Parks And Recreation Buildings).**

## ***City Council and Redevelopment Agency Action***

### **CONSENT CALENDAR:**

**Action:** On a motion by Mayor Pro Tempore/Vice-chairman Sellers and seconded by Council/Agency Member Lee, the Council, on a 4-0 vote with Council/Agency Member Carr absent, **Approved** Consent Calendar Item 6 as follows:

6. **AWARD OF CONSTRUCTION SUPPORT AND CONSTRUCTION STAKING SERVICE AGREEMENT FOR THE THIRD STREET PROMENADE PROJECT**

**Action(s):** **Authorized** the City Manager to Execute a Professional Service Agreement with BKF Engineers in the Amount of \$114,635 for Construction Support and Construction Staking for the Construction of the Third Street Promenade Project.

## ***City Council and Redevelopment Agency Action***

### **PUBLIC HEARINGS:**

7. **PUBLIC HEARING ON RECOMMENDED FISCAL YEAR 2009-10 OPERATING AND CAPITAL IMPROVEMENT PROGRAM BUDGET**

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City Manager/Executive Director Tewes said that on June 17, it is proposed that the Council will consider adoption of the Fiscal Year 2009-10 Operating and Capital Improvement Program Budget. He stated that this evening is the opportunity for the public hearing. He indicated that approximately three weeks ago, he presented a recommended budget to the Council and that the budget document is available at the back of the Council Chambers, library, and the City's website. He indicated that it is proposed to spend approximately \$140 million from all funds, including capital projects and operations. He addressed the general fund recommendations of a little over \$27 million.

Mayor/Chairman Tate opened the public hearing.

Gordon Siebert informed the Council that he previously served the City as public works director and finance director in 1990 and 1991, during similar difficult times. Due to the challenges the Council has gone through to reduce services, he would not be asking the Council to do anything different for this upcoming year's budget. He requested the Council consider stewardship of the City's infrastructure assets as part of the 2010 goals. He requested the Council direct staff to prepare a five year analysis that measures depreciation costs plus growth needs for the City's infrastructure and to use this information as the basis for decision making next year. He offered two suggested programs that can be used in the future to increase resources to advance infrastructures; especially in the area of roads. The first would be a damage mitigation fee that would be assessed to building permits that would offset the impacts from heavily loaded construction trucks. Other cities have found this to be about a 1% surcharge on building permits, and that there is a validated study that is based on engineering analysis. The other program would be a similar damage mitigation fee that would be assessed against the City's utilities. He said that sewer/water line breaks or heavily loaded refuse trucks use every street; resulting in damage to the streets. He informed the Council that a similar fee was imposed years ago, but does not know if it is still being collected. When the Council considers its budget in future years, he recommended the Council add back \$1 for spending and balance this with \$1 for infrastructure.

Frank Minocchio said that in the past, former board members stole the virtue of transparency in government. He noted that an issue was raised this evening by Council Member Lee. Another example was in the negotiations with City employees and the fact that they allegedly did not receive a cost of living increase. However, shortly thereafter, approximately half of the employees received a 5% pay raise. He said that the possibility of a pay raise was never mentioned at a meeting. He indicated that he had a brief opportunity to look at the budget and that there were a couple of items that bothered him: 1) the proposed addition of a city attorney at the same time the City will be eliminating three unfilled positions in the police department. He noted that there have been discussions about the need for more policing, and that it appears as though the City would be eliminating three unfilled positions for reasons that were not made clear to him. Now, it is being proposed to add an additional person on the administrative end of government. 2) There is the issue of what is taking place in Sacramento and how it will cascade down to Morgan Hill. He felt that Morgan Hill has run out of options and that it is time to get serious about making cuts, and in making the budget sustainable. He indicated that the Council knows his position on the Santa Teresa Boulevard and West Dunne Avenue project. He recommended the Council think about the ramifications of the drought and the ongoing water problems in California. He noted that the voters of Morgan Hill recently approved 500 additional housing units in the downtown and that by the time the economy turns around, there may not be enough water for these units. He requested the Council take some of the residential monies to pump recycled water into the ground aquifer.

Mayor/Chairman Tate said that should it be found that the proposed additional city attorney position not save the City monies, the position would not move forward. He clarified that it is the idea to save money by keeping city attorney work in house where the City would otherwise pay higher rates for outside work.

City Attorney/Agency Counsel Wan indicated that the City Attorney's budget proposes a decrease over the last fiscal year. He said that an in house deputy attorney is being proposed because a lot of legal work is repetitive and ongoing. Having an in house deputy attorney would result in more efficient costs/services; bringing back the institutional memory back to the City of these tasks.

Mr. Minocchio said that it may be true that having an in house attorney would save money in the short term. However, the pensions and benefits the City would be paying over the long term would far outweigh the benefits of the short term savings.

No further comments being offered, the public hearing was closed.

Mayor/Chairman Tate said that there would be opportunity to comment on the budget at Friday's Council's workshop.

Mayor Pro Tempore Sellers indicated that a decision will not be made on the budget on Friday, and a decision will be made later in June. Therefore, there will be opportunities for further comments.

**Action:**        **No Action Taken.**

## ***City Council Action***

### **PUBLIC HEARINGS:**

#### **8.        2009 BRUSH ABATEMENT PROGRAM COMMENCEMENT REPORT AND PUBLIC HEARING**

City Clerk Torrez presented the staff report on the 2009 Brush Abatement Program Commencement Report. She stated that the City contracts with the Santa Clara County Fire Department for hazardous brush abatement, and that the Fire Department has identified 23 hillside properties as having potential hazardous brush growing on the properties. These property owners have been contacted by the Fire Department and have been provided with the abatement requirements. She informed the Council that the Fire Department and City staff sent letters notifying the property owners about their obligation to abate hazardous brush and of tonight's public hearing. Staff was contacted by four property owners who indicated that they had abated the brush. These calls were referred to the Fire Department and resulted in a reduction in properties having hazardous brush growing on properties to 6 properties. She requested the Council open the public hearing to hear from property owners who may have objections to being included in the 2009 Brush Abatement Program, and that the Council accept the 2009 Brush Abatement Program Commencement Report. She informed the Council that in July, staff will return to the Council with a report; identifying the properties that had abatement work performed by the County and request

the Council authorize charges to be assessed to the property owners. Staff would need to notify the Santa Clara County Assessor's of the assessment charges by August 10.

Mayor Tate opened the public hearing. No comments being offered, the public hearing was closed.

**Action:** *On a motion by Council Member Lee and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Accepted** the 2009 Brush Abatement Program Commencement Report.*

**9. DEVELOPMENT AGREEMENT AMENDMENT, DA-07-04: GINGER-MURRAY – Ordinance No. 1937, New Series**

Senior Planner Linder presented the staff report on a request to approve a development agreement for three single family homes to be constructed on the south side of Peebles Avenue, between Rose and Ginger Way. She informed the Council that this project initially received five building allocations. However, two of the allocations for Fiscal Year 2007-08 have expired and that three allocations awarded for Fiscal Year 2008-09 remain. She stated that Exhibit B of the development agreement includes a one year recommended extension of the allocations. She said that findings for the extension include the extensive environmental processing and a redesign of the project; delays outside the developer's control. She informed the Council that it received a supplement that replaces paragraph 18 of the development agreement. This paragraph would authorize minor amendments to be made by the City Manager to the development agreements. She stated that the Planning Commission unanimously recommend Council approval of the development agreement.

City Attorney Wan stated that the supplemental document defines the minor amendments the City Manager is authorized to make. By approval of this form of agreement, the Council is giving the City Manager the authority to make minor amendments. He indicated that he also reviews the proposed amendments.

Mayor Tate opened the public hearing. Scott Murray, owner of the Ginger Rose project, informed the Council that he would answer any questions it may have. No further comments being offered, the public hearing was closed.

**Action:** *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Librers, the City Council, on a 4-0 vote with Council Member Carr absent, **Waived** the Reading in Full of Ordinance No. 1937, New Series.*

**Action:** *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Lee, the City Council **Introduced** Ordinance No. 1937, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MMC-04-09: TAYLOR/GINGER – MURRAY** by the following roll call vote: **AYES:** Lee, Librers, Sellers, Tate; **NOES:** None; **ABSTAIN:** None; **ABSENT:** Carr.*

**10. DEVELOPMENT AGREEMENT AMENDMENTS TO EXTEND DEADLINES FOR COMMENCEMENT OF CONSTRUCTION FOR: A) DAA-06-06C: MONTEREY-**

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**GUNTER; B) DAA-04-21D: BARRETT-SYNCON/B OF A; C) DAA-07-03A: CENTRAL-UHC; AND D) DAA-06-05: EAST MAIN-AHLIN – Ordinance Nos. 1938, 1939, 1940, and 1941, New Series**

Senior Planner Linder informed the Council that there are four projects that are quickly approaching the June 30 deadline to commence construction. She identified the four projects, addressed the difficulties each project is having in securing financing to begin construction, and the recommended extension periods as follows:

- A. Monterey-Gunter: a 15 month extension of the Fiscal Year 2006-07 building allocations. The applicant requested an extension of the Fiscal Year 2009-10 allocations. However, the Planning Commission is not recommending a change in the date at this time as other projects with the same year allocations have not yet received an extension.
- B. Barrett-Syncon: a 52 unit single family project. The project is currently under construction and 7 units have been completed with only 1 unit being sold. This project was recently taken back by the bank. The applicant is requesting a 12-month extension of the building allocations in order to move forward with the remaining six units. Recommended is an 18-month extension to the commencement of construction date for the remaining 2007-08 allocations, and 12-months for the 2008-09 allocations. The reason for the additional 6 months for the 2007-08 allocations is to allow for marketing of the project. This project also received 15 allocations for Fiscal Year 2010-11 as an ongoing project.
- C. Central-UHC: a 49 unit low income senior housing project. Due to the delay in the state budget, the federal tax credit application deadlines were moved back. The developer is securing federal tax credits to move forward with this project. A 13-month extension is being recommended.
- D. East Main-Ahlin: a 109 unit townhouse project. Grading is taking place and the project is moving forward. Unfortunately, the applicant was only able to secure financing for 14 of the 50 allocations that were awarded for Fiscal Year 2007-08. She identified the series of extension periods for the project.

Mayor Pro Tempore Sellers noted that a portion of the staff report, relating to the Syncon project, indicates that this was the only project that did not receive unanimous support by the Planning Commission. He noted that a concern was expressed about the project's financial status. He indicated that there was reference made that the Planning Commission had a strong desire to review a policy relating to ongoing projects in the future. He inquired whether the Planning Commission would be reviewing proposed changes to ongoing projects, whether any of the proposed changes would go to the Council, or would the proposed changes start at the Council level.

Senior Planner Linder informed the Council that it is the Planning Commission who awards allocations to ongoing projects. The policy currently states that if a project is in compliance with the development schedule at the time the City is giving out the set aside allocations, a project would be eligible to receive allocations as an ongoing project. One planning commissioner felt strongly about a project being taken back by a bank and the project's ability to move forward with an additional 15 units. The planning

commissioner would like to revisit the policy. She would need to check to see if the policy would move on to the Council.

Mayor Pro Tempore Sellers did not know if there would be broader policy considerations/discussions at the Council level.

Mayor Tate opened the public hearing for the four projects requesting modifications to their respective development agreements.

Mark Irving, Urban Housing Community, stated his concurrence with the staff report. He informed the Council that they are submitting the tax credit application next Tuesday and that they are ready to pull building permits on the project. It was his belief that they would receive notification about their tax credit application in September 2009 and break ground in November 2009.

Damon Gascone, Park Place Development Solutions, representing Bank of America for the Barrett-Syncon project, stated that he has reviewed the staff report and concurred with staff's recommendations. He informed the Council that the bank has taken the project back, and that the project has gone back out to market for sale this week. He indicated that brokers have already received offers on the project. However, the bank will not close the offer until late this month. The bank will review the offers and make a decision on what direction to take. The bank is looking at a bulk sale of the property to one developer that would move the project forward. If the bank finds that this is not in their best interest, they may sell the lots to one developer and sell the homes to another. Alternatively, the bank may finish the units themselves and sell them in the market as their project. He stated that they are processing the certificates of occupancies for two of the homes. He said that the first hurdle they ran up against is the June 30 deadline to commence construction. With respect to the concern raised by Mayor Pro Tempore Sellers regarding the planning commission, he said that a question was raised about the award of the additional units that is done by statute. The commissioner asked when the property went into default. He informed the Council that this occurs anywhere from 90-180 day period. The commissioner expressed concern that the developer knew that there was an issue that was outstanding, and that this was not brought to their attention.

No further comments being offered, the public hearing was closed.

Mayor Pro Tempore Sellers stated that although he appreciates the scheduling issue being raised, the City needs to be cautious in making policy decisions based on the current economic environment. If it was a scheduling issue that was of concern, it was appropriate that the commission raised/addressed the concern. However, if it has to do with ownership or larger issues of how and whether the status of the property impacts the RDSC and other matters, these are broader policy issues. If there are going to be broader issues raised, they need to be raised by the Council as the policy making body and not with the Planning Commission.

Mayor Tate agreed that the Council needs to consider any input the Planning Commission has. The Commission can talk about the issues and forward a recommendation to the City Council.

Mayor Pro Tempore Sellers noted that there are ownership issues and that the bank currently owns the project. There is an inability to access state funds; noting these are very extraordinary times and that the

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City needs to be lenient. He acknowledged that under normal circumstances, these would not be things that would be tolerated, but would be appropriate in these economic times.

Council Member Lee agreed with Mayor Pro Tempore Sellers' comments. She said that it is the Council's hope that these are short term situations that will not be dealt with in the future. She felt that the Council needs to make some decisions on how to proceed and what to expect.

Council Member Librers stated her concurrence with her colleagues' comments.

**Action:** *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Lee, the City Council, on a 4-0 vote with Council Member Carr absent, **Waived** the Reading in Full of Ordinance No. 1938, New Series for DAA-06-06C: Monterey-Gunter.*

**Action:** *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Lee, the City Council **Introduced** Ordinance No. 1938, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MC-05-03: MONTEREY-GUNTER** by the following roll call vote: AYES: Lee, Librers, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Carr. (DAA-06-06C).*

**Action:** *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Lee, the City Council, on a 4-0 vote with Council Member Carr absent, **Waived** the Reading in Full of Ordinance No. 1939, New Series for DAA-04-21D: Barrett-Syncon/B of A.*

**Action:** *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Lee, the City Council **Introduced** Ordinance No. 1939, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MC-04-21: BARRETT - SYNCON HOMES (BANK OF AMERICA)** by the following roll call vote: AYES: Lee, Librers, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Carr. (DAA-04-21D)*

**Action:** *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Lee, the City Council, on a 4-0 vote with Council Member Carr absent, **Waived** the Reading in Full of Ordinance No. 1940, New Series for DAA-07-03: Central-UHC.*

**Action:** *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Lee, the City Council **Introduced** Ordinance No. 1940, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MC-05-09: EAST CENTRAL-UHC** by the following roll call vote: AYES: Lee, Librers, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Carr. (DAA-07-03)*

**Action:** *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Lee, the City Council, on a 4-0 vote with Council Member Carr absent, **Waived** the Reading in Full of Ordinance No. 1941, New Series for DAA-06-05: East Main-Ahlin.*

**Action:** *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Lee, the City Council **Introduced** Ordinance No. 1941, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MC-05-06: EAST MAIN-AHLIN** by the following roll call vote: **AYES:** Lee, Librers, Sellers, Tate; **NOES:** None; **ABSTAIN:** None; **ABSENT:** Carr. (DAA-06-05)*

## ***Redevelopment Agency Action***

### **OTHER BUSINESS:**

#### **11. UPDATE ON IMPLEMENTATION PROGRAM – PHASE-ONE CINEMA MIXED-USE PROJECT: APPROVAL OF HENRY ARCHITECT’S CONTRACT AMENDMENT TO TOTAL \$28,200 AND PRESENTATION OF THE CONCEPT DESIGN**

Assistant to the City Manager Heindel presented an update on the implementation program for Phase I of the Cinema mixed use project. He requested the Council provide comments regarding the project. He said that it would be important to add that this particular design is feasible under the specific plan to be presented to the Council later this year as it was deemed feasible with the Cinelux owner. Should the City be able to find a lender in these economic times, this may not be the particular design an investor may desire. He informed the Agency Board that Rob Henry, project architect, was in attendance this evening to answer any questions the Council may have.

Rob Henry, Henry Architects, indicated that the City asked his firm to look into this project because of their extensive background in cinema work and multi use projects in downtown redevelopment areas. His firm was asked to design a cinema that would work on this particular site and to incorporate as much retail space along the ground level of Second Street/Monterey Road with office space above within the project; including maintaining as much of the existing parking on site as possible. He walked the Council through the conceptual design for this project, noting that the cinema has been designed on the second floor and would not interfere with the retail space. They incorporated and reused design features of the old cinema into the new project (e.g., reuse the existing sign/marquee, curved canopy, etc.). He indicated that the entry into the cinema is to be recessed back from the sidewalk; picking up the idea from the existing cinema. A ticket booth would be at the street level and another ticket area is proposed on the second level. They incorporated a wine bar so that it becomes an adult oriented facility, and located the lobby to overlook Second Street – to give a pedestrian friendly concept. He addressed further design features of the second and third stories that would have office space in the front. He indicated that the design included the retention of the existing large tree located at the corner of the adjacent property, a stepped back 40 foot wall so as not to impact the adjacent neighbor, and provided for side exits from the auditorium space to allow for full width screens. He addressed the exterior designs as well as the addition of a residential component proposed on the fourth floor of the project (three units).

Mr. Heindel noted that most of the downtown buildings have 40 foot wide elements and that this particular design incorporates a 40 foot element. He indicated that a portion of the top level is set back and would not be seen from the street.

In response to Agency Member Lee's question, Mr. Henry indicated that access to the residential units would be from a shared elevator located in the lobby with a key card access to the residential area. Residents would also have an opportunity to access their units from the back parking area.

Chairman Tate stated that he assumed that Mr. Henry's firm derived a design that physically fit and can be conceptually designed to incorporate the elements of the existing Granada Theater. He felt that there were things about making a cinema work that has a business aspect. He noted that Mr. Henry implied that he received some input from Mr. Gunsky (Cinelux) on the design.

Mr. Henry said that Mr. Gunsky has been involved in reviewing the design and provided direction. Mr. Gunsky has indicated that having four screens would be better than having three screens as it would give him more flexibility with the number of movies he can show.

Mr. Heindel said that Mr. Gunsky was involved in talking about the size of the various seating capacity for each of the auditoriums; indicating that the entire cinema aspect was done in an interactive process with Mr. Gunsky's participation.

Mayor Tate noted that two of the three components have weighed in on this project: the person who is designing the project and the person who will be operating the cinema. What is needed is the person who would develop the project.

Mr. Heindel indicated that the next step would be to locate an investor/developer and banker who will finance the project.

Mr. Henry informed the Council that the auditoriums are being designed to be smaller than the auditoriums at the Tennant Station project because Mr. Gunsky intends to show a different type of product (e.g., adult oriented art films versus the big block buster movies).

Vice-chairman Sellers indicated that there has been discussion and concerns surrounding the notion about the natural aversion to change. He said that it sounds counter intuitive to ask an operator to come in to operate the old Granada Theater facility and then build a new one. There is a thought out there about keeping the existing Granada Theater if the existing model works. He requested that Mr. Heindel address why this might not be a viable model, long term. Would an operator only be interested if there is a new cinema model?

Mr. Heindel said that the original notion about focusing on the A-2 site was presented to the Council/Agency Board at its January 20, 2009 workshop. At that time, there was discussion about the fact that the downtown mall A-1 site is three times (1½ acre) larger than the A-2 site (½ acre). In the process of the nine months that staff spent with the consulting team and the architects in looking at these sites, a lot of things were learned as to what can be placed on the two sites. He stated that it became clear that the existing Granada Theater (7,500 square feet) is not located on the corner, but adjacent to the Tobacco Shop (2,500 square feet). It was felt that a smaller project that does not include a residential component would be more likely to move forward at this time. There were other factors associated with the sites that attributed to the decision of moving forward with the A-2 site. With respect to the existing Granada Theater and the discussions with Cinelux about operating the new cinema, they came forward

to state that this makes sense to them. He informed the Council that conversations are ongoing. Staff proposes to return to the Council in 2-3 weeks to identify what can be done with the existing Granada Theater.

Executive Director Tewes said that when staff originally proposed the A-2 site, the Council/Agency Board approved the recommendation based on the concerns brought forward by the Council/Agency Board and the community. The Agency Board asked staff to evaluate an interim operation of the existing Granada Theater. He said that Mr. Gunsky's interest is in the new project, and that he has expressed an interest in operating the existing Granada Theater on an interim basis.

Vice-chairman Sellers felt it critical that this discussion be elaborated upon and made clear to the public as the City moves forward.

In response to Agency Member Librers' question, Mr. Heindel clarified that the Agency Board was not voting on a design this evening. Staff will present an idea of what might work, but would be open to any ideas; returning to the Council, if necessary.

Agency Member Librers stated that she wanted to make sure that should a developer step forward; the City would be open to their suggestions. She noted that staff was asking for additional funding for the residential element. She inquired if this was a bill the City already owes, or whether the added residential design was an afterthought.

Mr. Heindel said that it is often stated that the city wants to shrink timelines and move as quickly as possible. He said that staff got ahead of itself with respect to the residential component. He requested Agency Board approval of the additional funding for the fourth floor residential design as the design gives everyone a feel for the maximum envelop that would fit within the new specific plan. In response to Agency Member Lee's question, he said that the addition of the residential component was staff's idea.

Chairman Tate opened the floor to public comment.

Rocke Garcia, downtown property owner and a member of the PBID, stated his support of the project proposed by staff. It was his belief that four screens would be the minimum number needed, and that they must work off of each other.

Gary Walton said that he understands that this is a concept design with no decisions to be made this evening. He indicated that one of the buildings to be demolished is a building that he retrofitted in the early 90s for Mr. Heinken. He stated that the Measure A Committee had discussions with community members who stated their preference for the preservation of the Granada Theater. He noted that a "Save the Granada" campaign popped up a couple of days before the election. He felt that care needs to be taken to preserve the city's history and the community's character embodied in the existing buildings. He stated that people have an affinity for the downtown, and that they like it that way. He said that there is often talk about smart growth in the city; noting that the City is moving toward adopting policies of sustainability and green construction. He defined smart growth and stated that the greenest thing an individual can do is to continue the life of an existing building by maintaining the building, or by restoring/rehabilitating the building. Building green is not the answer because it takes 40 years to

recover the energy to build a new building. He stated that there is a tremendous amount of energy in the buildings already built and that they deserve the consideration of being incorporated into whatever the city is trying to do. Tearing down existing buildings and replacing them with new buildings would make affordable rent impossible. It was his belief that affordable rent is crucial to attracting and retaining independent businesses. Entertainment events and arts will be the foundation that would bring a large number of individuals to the downtown. In order to strengthen this foundation, the downtown would need as many venues for entertainment and events as possible. He did not believe it made sense to demolish a building and replace it with another. There could be two venues for entertainment with events taking place at the Granada Theater, if retained. He stated that he was not opposed to a new movie complex, but felt that the community would like to keep the one it already has. He requested the Agency Board try to incorporate the old with the new; preserving the character of the downtown. He indicated that the community does not want a Santa Row clone.

Pamala Meadon recommended that the Agency Board visit [www.savethegranada.com](http://www.savethegranada.com) as it talks about the grass roots organization that came about when it became apparent that the Granada Theater would not stay as a multipurpose theater. She stated that the multiplex cinema is a wonderful concept, but that it should not replace the multi purpose art and entertainment facility in the Granada Theater. She did not believe there is a venue in the downtown where you can bring 500-600 individuals in a covered area for performing arts, lecture series, etc., that the Granada building lends itself to. The Save the Granada group would like to engage in dialogue with the individuals making the decisions to let their voices be heard because they love this building. She acknowledged that in today's climate, a single venue for movies is not economically feasible. However, if a theater can be used for multi purposes, it can add art and entertainment venues to Morgan Hill. In response to Agency Member Lee's question, she did not believe the Community Playhouse is a viable option because it can only accommodate approximately 180 seats and no food is allowed in the facility. She stated that the Granada Theater was built as a multi purpose facility and that it was centered in the middle of downtown – a real draw.

Sally Casas informed the Council that her sister resides on Del Monte and Warren Avenue, and that her views would be blocked with this project. The hills would no longer be visible with a proposed four story building. She stated that there was an agreement to bring in construction from the community. She felt that it would be dangerous to serve alcohol when children are present at the cinema. She did not believe the design fits the downtown as it is not rustic and the buildings are off kilter (e.g., a proposed four story building with a one story building across the street).

Leslie Miles felt it important to proceed with a conceptual design as it is important to get an idea of where we want to go. As a member of the Measure A Committee, the Committee heard concerns expressed about saving the Granada Theater and the fact that Morgan Hill is a unique community. She appreciated the attempt of developing designs that use the current 40 foot property modulation. She applauded the architect who did the work in Livermore that included very nice elevations adjacent to the cinema consistent with the scale that we would be looking for in Morgan Hill. She felt that scale is one of the things that needs to be looked at. In looking at the relationships of the buildings in the downtown, you will see different types of solar experiences. It would be important to think about sustainability from solar access and designing green buildings that would encourage a walkable environment. She felt that a way to bring a lot of the issues to the forefront and create a community relationship is to have community conversations regarding the design for the downtown. This may be the perfect opportunity to do so now that Measure A has passed.

Laura Gonzalez-Escoto stated that she spent over 26 years in urban/community planning and redevelopment work. She has learned that there is nothing better than a community coming together in reviewing a plan. She felt it important to engage the residents. She did not believe the project would move forward based on today's market. She stated her support of the development of the site; recommending clear guidance be included in the RFQ. It was her belief the City and the community needs to find a qualified individual to partner with in building the project. She recommended that focus be given to the deal points and vision. She did not recommend that focus be given to what was presented this evening as this is not what you would include in an RFQ. What was presented this evening is what could be built on the site based on square footage. She informed the Agency Board that the Measure A Committee learned that individuals will come to the best decision. She does not believe there is an aversion to change; especially when you converse through the process. She recommended gaining trust so that individuals can take a giant leap forward to say "yes." However, it needs to be guaranteed that everyone will be engaged/involved in the next steps as we move forward. It will be the process that will be important: the time you bring on a developer, hold community meetings, and look at the site together. In putting the RFP together, she felt that the Agency Board needs to speak clearly of what is expected on the site.

Patty Curtis, store owner in the downtown, informed the Agency Board that she got into the habit of asking her customers if they knew about the plans for the Granada Theater and the possibility of building a new theater on Second and Monterey Road. She stated that most individuals are surprised because most do not know what is going on in the downtown. She indicated that her customers are opposed to tearing down the Granada Theater and in spending more money on a new theater. She informed the Agency Board that her family attends several movies at Cinelux and that they can leave two minutes before the movie starts as there is never a line and always finds seats. She did not know if there would be enough individuals to attend a four screen movie theater in the downtown. She encouraged the City to keep the Granada as a venue as addressed by others this evening as it is part of the downtown. She agreed that a venue is needed in the downtown and keeping in touch with our past.

Frank Manocchio concurred with Ms. Gonzalez-Escoto's observation of what will probably take place. Although what was presented this evening was a nice design, it is essentially a wish list. He felt that it would be hard to find a developer/lender. He addressed the request for the additional \$3,000. He noted that earlier this evening, Council Member Lee requested that an item be agendaized in the future for a report on unauthorized actions taken by staff. He noted that the City Manager stated that he was not aware of any other instances where unauthorized actions were taken. He noted that Mr. Heindel gave a preliminary peak of possible things to come. When asked directly if this was a bill to be paid, Mr. Heindel responded that "technically no." He proceeded to give a long answer that this was a bill the City needs to pay. He expressed concern that perhaps staff believes it is easier to ask for forgiveness than permission to authorize costs that are not within their purview. He felt this to be a problem. He was not stating that the architect should not be paid for their time, but felt that the \$3,000 should come out of the department's operating funds.

No further comments were offered.

Vice-chairman Sellers noted that it was mentioned that this is an update report; giving the Agency Board a sense of what is possible. He said that although this was an attempt to put everything on the site as

possible, he was not sure the Agency Board would want to do so. He said that it was good to have seen the residential component as it made it clear that it was not as attractive as it might have sounded in concept. He appreciated the creativity the architect put into making all this happen. He noted that the Votow building, just north of the project, is the largest building in the downtown. He said that the City has to be cognizant of the massing and how it will all fit together. He felt it good to have a visual concept to get a sense of what the project would look like. He stated that he was not averse to having a significant building in the downtown, but that it has to make sense in the larger concept of the entire downtown. He felt that there were significant opportunities in the Sunsweet site. It was his belief the City would be looking at a three story building in order to preserve the parking and to be able to build 2-3 stories of cinema space. He was not sure if the residential component was desirable. He stated that he is big on history; indicating that he owns one of the older houses in town and that his office is located in the oldest office building in town. He noted that the Granada Theater has been closed for five years because no one has been able to figure out a way to operate it. He supported preserving the Granada Theater as a venue if we can figure out the numbers. He noted that the Granada Theater has had public and private owners. With respect to the request to appropriate an additional \$3,000, he felt that the bill needs to be paid. Part of the blame falls on the Agency Board as it asked for things to be expedited and to provide complete information. To some degree, it is understandable in this particular instance. He is interested in having the item brought forward by staff at a future meeting, and to come up with better ways to deal with increased costs. He acknowledged the City has to pay a bill that has been accrued, but that the Agency Board/City Council needs to make sure that it is not the norm. He recommended the Agency Board/Council establish clear parameters when this may be acceptable/unacceptable.

Agency Member Librers thanked the individuals who presented their thoughts this evening. She said that the speakers presented a similar train of thought with personalization. She felt it important for the Council/Agency Board to hear the comments of its citizens, and that their comments will be considered.

Agency Member Lee appreciated everyone coming forward and speaking in support of the Granada Theater. However, it seems to be the same individuals coming forward in support of the existing Granada Theater. She has also heard from the same number of individuals who are excited with the idea of a new building. She stated that it is hard to get a good sense of where the community is on this issue. She said that she has to go with the input presented and with her gut feeling. She felt that this project will be important to what will take place in Morgan Hill and where we go. In looking at what has been presented this evening, a lot of questions were raised. She noted that staff's recommended action is that the Agency Board accepts the concept design. She said that she gets nervous when the Agency Board is asked to accept the conceptual design and what it means for the future. She expressed concern with the additional work. She noted that the added residential design concept came from staff and not from the Agency Board. Therefore, she would not be inclined to support the additional funding request as she previously raised a concern about additional expenditures without Council/Agency Board authorization. Voting to approve the additional funding, even though the work has been completed, would give a green light to allow a similar action to take place again. She wants to hear what the community wants to take place: retain the Granada Theater or build a new theater, as she was not hearing overwhelming support on either side.

Vice-chairman Sellers said that as good as a design, concept and/or drawings might be the only thing that is known for certain is that this will not be a design that will be built. He felt that a different design may evolve for any number of reasons. He pointed out that the City would be proceeding with an RFP,

but that it needs to be made clear that the City will be having/welcoming community input. It was his belief that community input needs to be a part of the overall process. However, this does not mean the City will end up with a small fraction of what might be possible. The City needs to make sure that whatever ends up being built, the City has significant input that brings the best ideas forward; incorporating the collective elements. He felt that a good developer of commercial projects would welcome community input as they inevitable bring about a better design and a better product. It will be important, as the City proceeds with the RFP, that these thoughts are incorporated. It needs to be stated that the public input phase needs to be incorporated into whatever the city ends up with.

Chairman Tate felt that the Agency Board/Council realizes how hard it is driving staff. Staff is anticipating what the Council/Agency Board wants it to do and trying to stay in front. He indicated that the City Manager/Executive Director frequently stops by his office and gets his initial reaction on how hard the Council/Agency Board is pushing. He agreed that the Council/Agency Board needs to talk about this as a policy. It was his belief there were reasons why staff is taking an aggressive approach; taking the Council/Agency Board's lead and following its direction. What was learned from the expenditure of the monies in the design of the residential component is that he does not like the fourth floor or the residential concept in this development. Therefore, the Council/Agency Board learned something from the additional residential design. He indicated that a lot of the speakers were instrumental in the passage of Measure A, are passionate and acquired ownership. He said that Committee members spoke with a lot of passionate individuals and received a lot of input. He has come to realize the passion of a lot of the residents in Morgan Hill for things they want to keep.

Chairman Tate said that his concept of this theater was never to save the Granada. It was felt that the Granada was an old theater that was very large that would not work in modern day. Mr. Gunsky, the cinema operator, came in and gave direction on how to lay out the four screens that would work. He felt that the missing element was the developer that would make the project work. If the City is going to preserve the Granada Theater, a developer needs to be found who can state that it can work. He noted that no one has stepped forward to make the Granada Theater work. He does not know how to find someone who can develop the existing Granada Theater. He looks forward to hearing from Mr. Gunsky in 2-3 weeks to receive his input so that the City can get a better feel on what will work. He would also like to receive additional input from Mr. Walton, as a developer.

Chairman Tate stated that he likes the idea of having public input. He noted that citizens elect council members to make decisions. He recommended receiving input by talking to the individuals who are passionate about saving the Granada Theater. He said that he is frequently approached by downtown merchants who state that the City is not moving fast enough. He indicated that Council Member Carr could not be in attendance this evening, but that his overall philosophy is to move as quickly as possible with respect to the downtown. He recommended using every opportunity to find a developer. He was pleased to hear the presentation made by Mr. Henry in terms of having all the elements of the old Granada building incorporated into the new building to preserve history. He requested input from citizens about other pieces of architecture that can be incorporated into the design. He read the historical evaluation as contained in the Save the Granada website. He said that it was his opinion that the City needs to stay in the direction of the A-2 site unless someone can come up with a way to do something with the Granada Theater before committing to the A-2 site; incorporating community ideas. He did not support making a recommendation until the next steps have been identified in terms of what will happen

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with the interim use. He agreed with the feasibility of doing something with the A-2 site; without necessarily committing to doing something with the A-2 site.

**Action(s):** *On a motion by Vice-chairman Sellers and seconded by Agency Member Librers, the Agency Board, on a 3-1 vote with Agency Member Lee voting no and Agency Member Carr absent, **Approved** a contract amendment for Henry Architects for the Concept Design Study of the RDA-owned Monterey Road and East Second Street Site.*

Executive Director Tewes indicated that staff heard from two members on the Agency Board that they did not believe the fourth floor element/design should include residential. He informed the Agency Board that staff will return in two weeks with a report on the interim operation. He noted that the Agency Board has asked staff to evaluate what costs would be necessary to bring the Granada Theater to a usable state and how the operator, Mr. Gunsky, might proceed. He said that the next step for staff is to embody the visions of the Downtown Plan and these concepts into a Request for Proposal so that the City can move into the next level of feasibility – is this economically feasible? Will someone be willing to risk their private capital in this or any other project because they believe they can make money? If a developer cannot make money, they would not invest in the project.

## ***City Council Action***

### **OTHER BUSINESS:**

#### **12. ACTION ON RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) COMPETITION SECOND YEAR PHASING REQUESTS, AND PRELIMINARY DISCUSSION ABOUT FALL 2009 RDCS COMPETITION – Resolution No. 6247**

Planning Manager Rowe requested the Council adopt a resolution approving a second year allocation to allocate 23 units to three projects that competed in a competition earlier this year. The allocations would be used to complete three projects. He indicated that this item was considered by the Council on March 18, 2009 and that based on a request from Mayor Pro Tempore Sellers, the Council deferred action on the item until the outcome of Measure A was known.

Planning Manager Rowe recommended the Council reserve some portions of the allocations from the next competition for projects that are considered “ongoing projects.” He requested the Council concur with staff’s recommendation to conduct a competition for the 150 allocations that would be available for an upcoming competition; clarifying that the competition would be for certain set aside categories, not including an open market category. He noted that there are 291 units slated to be built as a result of extensions that have occurred. With this competition, the City would be adding another 223 allocations to this total. As a bulk of the allocations listed follows the projects that are open market units, there are plenty of open market allocations waiting to be built. Staff recommends the Council look at other set aside categories to distribute the 150 allocations.

Planning Manager Rowe noted that the staff report indicates that staff would be looking at revisions and streamlining Measure F. He referred the Council to page 185 of the agenda packet that lists a number of set aside categories for micro projects, affordable projects (at least 20% of the annual allotments should

be set aside for affordable projects), and areas outside of the 20 block area of Measure A that are considered to be in the downtown. He informed the Council that the Planning Commission is scheduled to consider this item next Tuesday and will be forwarding a recommendation to the Council on June 17.

City Manager Tewes summarized the four different categories being recommended to the Council: 1) of the 221 units, 23 units to be allocated to projects previously allocated allotments – extending the allocations into a second year; 2) of the 221 allotments, 48 to be allocated to complete 4 existing projects; 3) conduct a 1-year competition in October 2009; and 4) that the Planning Commission recommends certain set aside categories for the competition. He informed the Council that the City Attorney has advised staff that holding a competition is a choice given by the voters in this approved initiative. Further, that the City needs to be careful as to how fine ranged the categories are to be. He said that the set aside categories have to be somewhat general to ensure a competition and that clear guidance needs to be given on how individuals can apply/compete for these units.

Mayor Tate said that he did not know why the City would exclude an open market rate competition if an open market rate project is ready to move forward.

Planning Manager Rowe stated that staff is recommending the exclusion of an open rate market rate competition. He noted that 179 open market rate units have been allocated and that these allocations continue to be extended out. They are now being extended into the same fiscal year the City would be awarding allocations. Staff felt that there was a greater need to allocate 150 units to other housing categories such as rental units as the city has a very low apartment vacancy rate at this time and that there is a need for this housing type. He said that there has only been one sale of a new home the first quarter of this year.

Mayor Tate opened the floor to public comment.

David Anderson addressed the property located at 835 San Pedro that would be classified as an open market project. He said that the key to success has been in well thought out planning that is adhered to by all participants. He informed the Council that they have tried to receive allocations on this property for the past five years. He does not know how anyone can have success with a moving target (change in set aside categories). He said that there is no steady plan and that it is always in a state of flux. He requested the Council work this out so that property owners, developers, and the City can come to an agreement; moving forward as agreed upon and not keep shifting the plan around.

Carol Enos Anderson informed the Council that she and her brothers inherited a 10 acre parcel on San Pedro Avenue which they sold five years ago to a developer who put together a plan and started to bid for allocations. The developer has continued to apply for allocations ever since. She stated that their agreement with the developer is that the property would be sold with escrow closing when he received allocations. However, they have seen the process go on and no one gets anywhere; a costly process for everyone involved. She inquired if there is a cap on how long individuals need to wait before receiving allocations when they have done everything the City has required them to do. Does a developer need to wait indefinitely before receiving allocations? Why is the City contemplating not have a competition this year when individuals have been waiting five years and longer for their allocations? She requested the Council consider that there are individuals waiting for development to occur and requested that something be done to get their development moving.

Margaret Vierra, real estate broker, informed the Council that she represents 9 land owners. She has been under contract with developers for as much as 5-7 years. She stated that over the past three years, they have had a downturn in sales and housing activities. However, we should not be short sighted and not look at the future. She felt that we need to plan and make designs for the future because what is done today does not come into fruition until several years into the future. When the housing needs come back in the future, we need to be prepared to satisfy the needs of the families and the community. She stated that landowners asked that she relay to the Council that they supported the City on Measure A for the downtown, and that they would like the Council to support them by allowing an open market competition this year.

Rocke Garcia requested that a competition be held this year as competitions are important to builders and developers in getting the best projects built. He further requested the Council establish a custom home set aside as he has a project located at the corner of Santa Teresa and Watsonville Road, adjacent to Quail Measures, that was annexed into the City 3-4 years ago. He is proposing to develop high end 1 acre custom homes. He indicated that a custom lot subdivision has a requirement that all off site improvements be installed in the first phase and that he is prepared to do so.

Dick Oliver indicated that he is the developer for the Mission Ranch project - a 12-14 year project. He said that they need additional units to complete the project and would appreciate that ongoing projects receive allocations. He informed the Council that he received a call from Maureen Upton, stating that she is making the same request. He felt that the community needs senior housing and that there will be a greater need in the future.

John Telfer requested that an open market competition be held this year. He said that those that competed in the last competition and are multi phased projects would be considered ongoing projects, thus eligible for the automatic 15 allocations. However, the problem is that the criteria established for these projects was meant for two-year allocations. He noted that there are certain benchmarks to be considered as an ongoing project. He said that it would be impossible for any project approved last year as a single phase to meet this criteria. Such a project would have to have a final map and building permits in place less than 7-8 months following the award of allocations. He did not believe this timeline can be met. Developers were told, at the time, that they could re-compete for a second phase. Now, he is hearing that staff is recommending that an open market competition not be held; taking away the ability of the projects worthy enough to receive allocations last year to compete. He noted that there has only been one open market rate competition since 2004. He felt that diversity in housing types will be needed in the future in order to serve the community as we move out of this recession.

Gino Borello, speaking on behalf of the Borello family, informed the Council that his family was awarded 28 allotments in 2008 that were to be built in tandem with the anticipated ongoing 2009 Measure C allocations. He indicated that their development phasing plans are built around a continuous stream of allotments. He felt it imperative to have consistencies throughout the entitlement process. He stated that staff changed direction last year and amended the two year competition into an annual competition. Before making this decision, numerous consultants offered their points of view regarding this matter, and that a decision was made by staff to proceed with an annual competition. He felt that this was a direct contradiction from last year's commitment from the Planning Commission. As land owners/developers, they make decisions based on the rules outlined by the City. If the rules continue to

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change from year to year, it would be extremely difficult to build a master plan development. He urged the Council to support this year's open market competition as eliminating this year's competition would create a major gap in their schedule and hinder their ability to proceed in a timely fashion. He requested that they be recognized as an ongoing project and awarded 15 allocations that would allow them to continue with their development and eliminate a one year gap in their development schedule. As an alternative, the City holds the promised annual Measure C competition. He noted that the criteria states that 50% of the allocated units must be under construction. Due to an amendment from a two-year competition to a one-year competition, it would be impossible to meet this criteria. He felt that the criteria needs to be amended so that the projects allocated in the 2008 competition would be able to meet the qualifications of being considered ongoing projects. He indicated that the Council asked the development community to support Measure A; noting that they supported the measure the second time and now they are facing the elimination of the annual competition. He requested consistency.

Richard Liaw, representing Monterey Dynasty, informed the Council that his company has 2-3 ongoing projects in Morgan Hill. Fortunately, they were awarded 68 multi family units last year. He stated his support of holding the open market competition or that they be allowed to receive set asides as an ongoing project.

No further comments were offered.

Planning Manager Rowe informed the Council that the Borello project has a potential total of 245 units. It was allocated 23 allotments and needs another 222 units to complete the project. He acknowledged that the project received allocations for one fiscal year. He said that the policy that addresses ongoing projects contemplated two year allocations, and that in order for this project to move from the lower list of potential ongoing projects to the upper list, at least 50% of the 23 units would need to have their building permits pulled by September 30, 2009. If it were a two year project, the project would have until September 2010 to be considered an ongoing project. He noted that Mr. Borello requested the Council consider them as an ongoing project and not require that 50% of the first phase permits to be pulled, or to allow them to compete in an open market competition in the fall to add to the 23 allotments they have and not have an interruption in the development schedule. Should the Council agree to consider the Borello project as an ongoing project, the Council would also need to consider the bottom four projects in fairness; requiring an additional 60 allocations on top of the 48 to be set aside for ongoing projects. He indicated that the Borello project was one of the higher scoring projects in the last competition and can pick up additional allotments through the open market competition.

Council Member Librers stated that she was shocked to listen to the presentation and comments; indicating that the developers are an important part of the community and have in good faith followed all the rules. She stated that she did not support staff's recommendation of not holding an open market competition this year.

Mayor Tate addressed the four recommended actions before the Council this evening by stating that: 1) he supported extending the 23 units to ongoing projects; 2) supported allocating 48 units to complete the 4 existing projects and perhaps adding more units; recommending receiving a Planning Commission recommendation on this. 3) He supported a one year competition. 4) He understands the developers' concerns about the need to have set asides for the open market allocations. He noted that there could be the possibility of having a great project ready to proceed. He understands the need for the other set aside

categories outlined by staff, but would like to receive the Planning Commission's input and recommendation on the set aside categories.

Mayor Pro Tempore Sellers indicated that it was mentioned that the City may not see affordable projects come forward based on the current economic situation. It was further stated that there was a need for rental units; noting that one of the projects is a rental project that will move forward. He said that the Council is being asked to provide input to the Planning Commission, and that it sounds as though the Council is asking that a way be found to resolve some of the issues with respect to the open market competition by granting second year allocations to projects awarded a one year allocation; considering these projects as ongoing projects.

Mayor Tate stated that the Planning Commission deals with the Residential Development Control System (RDCS) competitions, have the expertise, and that he would like to hear from them on these questions before the Council takes final actions.

City Attorney Wan stated that under the RDCS system/ordinance, development allocations must be awarded and that a competition must be held. He was not hearing the Council suggest a competition be eliminated. He recommended that the set aside categories be constructed carefully while at the same time accomplishing the Council's policies. He acknowledged that the Council can have preferences for the type of housing that is needed for the general welfare of the city for affordable housing, etc. However, it cannot be construed so narrowly as to favor a certain type of housing and clearly discriminate against one class of people over another. Should the Council restrict the competition to only certain categories, and there are allotments left over because of the lack of competition in certain categories, the left over allotments still need to be awarded somehow. The Council may end up having an open market competition anyway for the remaining allotments that were not competed for in the set aside categories.

Mayor Pro Tempore Sellers requested that these legal comments be relayed to the Planning Commission as it would be helpful to them.

Planning Manager Rowe informed the Council that staff will return with language in the resolution that will give the Planning Commission the authority to redistribute the set asides to other areas. He indicated that the City did not receive any applications in the affordable competition set asides. Therefore, these allotments will be redistributed to the open market and added additional units to the rental area in order to have the ability to award the allocations as required by the RDCS ordinance. With respect to the competition recently held, he clarified that it was not staff's decision to hold a one year competition as staff does not have this authority to make. The Council made the decision that it should be a one year competition and not a two year competition. He requested that the Council adopt the resolution; approving a second year allocations.

**Action(s):** *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Librers, the City Council, on a 4-0 vote with Council Member Carr absent, **Adopted** Resolution No. 6247, Approving Second Year Residential Building Allotments Into Fiscal Year 2011-12 For Three Projects.*

**13. FOX HOLLOW/MURPHY SPRINGS LANDSCAPE ASSESSMENT DISTRICT - SETTING OF ANNUAL PUBLIC HEARING – Resolution No. 6248**

Deputy Director of Public Works Struve indicated that this item is the intent meeting of setting the annual public hearing on June 24, 2009 for the Fox Follow/Murphy Springs landscaping assessment district that has 20 separate sub areas with 755 property owners being represented. He stated that staff continues to publicly bid every other year for landscape maintenance services; especially this year because of the competitive bidding climate. He informed the Council that staff received a good price for the maintenance service as a result of bidding the landscape maintenance service this year. This year, staff recommends an increase to only one of the 20 sub areas. This sub area is the Chang-Bertalone landscape sub area located along Hale Avenue, an area that has not received improvements for a number of years. He said that it would be important to raise the assessment to pay for the maintenance service for the landscape area.

Mayor Tate opened the floor to public hearing. No comments were offered.

Mayor Pro Tempore Sellers indicated that the Council hears this item every year, and that for quit a few years, the fiscal situation has been dire and there have been interesting challenges where you had individuals not willing/interested to increase the assessment amounts. The City had negative balances and that this was a very complicated and unattractive situation. He was pleased to see the City has come out of the dire situation; largely due to the diligence, foresight and creativity of staff. He commended staff for turning this situation around and that the City is starting to develop a reserve where the City can start adding some things.

**Action(s):** *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Librers, the City Council, on a 4-0 vote with Council Member Carr absent, **Approved** Resolution No. 6248 that: 1) **Initiates** the Proceedings for the Levy of Assessments for Fiscal Year 2009-10; 2) **Provides** Approval of the Engineer's Annual Report (Exhibit B) and the Proposed Assessment Levy; and 3) **Declares** the City Council's Intention to Levy the Assessments in the District and **Sets** the Public Hearing Date for June 24, 2009.*

Mayor Tate noted that there is continued talk about the negative impacts of the economic situation, but felt that the City received a very good rate from the bidding process – very good news.

**14. REVIEW OF CITY COUNCIL/REDEVELOPMENT AGENCY MEETING SCHEDULE**

Mayor Tate indicated that the Council would be holding a budget workshop this Friday morning at 8:30 a.m.

Mayor Pro Tempore Sellers noted there are five Wednesdays in July, and that based on Council policy, the Council would not be meeting from July 22 until August 26. He felt that this would be viable and that it would meet his schedule.

Mayor Tate noted that he requested a half day workshop be scheduled to focus on the goals established earlier this year to review how they can be extended so that the Council has goals in place for the entire year. He suggested holding the goal setting session in August.

Council/Agency Member Lee noted that school starts on August 19 or 20. She stated that she has not yet determined a vacation schedule, but felt that she could work around the workshop date.

Mayor Pro Tempore/Vice-chair Sellers suggested scheduling the workshop on Friday, August 21 or August 28.

City Manager Tewes noted that there is a suggestion by staff that the July 1 meeting be held.

Council Member Lee indicated that staff is recommending the July 1 meeting be held because a report needs to be made on the urgency ordinance relating to massage/massage practitioners.

**Action(s):** *By consensus, the City Council/Agency Board **agreed** to the following meeting schedule: Meet on July 1, July 15 and July 22, cancelled the August 5 and August 19 meetings, agreed to meet on August 26, and agreed to hold a workshop on Friday, August 21 or 28 (staff to coordinate).*

**FUTURE COUNCIL AGENCY-INITIATED AGENDA ITEMS:**

- Agendize the review of actions taken prior to receiving Council/Agency Board authorization (Lee)

***Redevelopment Agency Action***

**CLOSED SESSION:**

Agency Counsel Wan announced the below listed closed session item.

**1.**

**CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Authority: Government Code 54956.8  
Property: APN 726-14-001; 95 East Third Street  
Negotiating Parties: Executive Director, Agency Counsel, Assistant to City Manager  
Under Negotiation: Price and Terms of Payment

**OPPORTUNITY FOR PUBLIC COMMENT**

Chairman Tate opened the Closed Session item to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION**

Mayor/Chairman Tate adjourned the meeting to Closed Session at 10:15 p.m.

**RECONVENE**

Mayor/Chairman Tate reconvened the meeting at 10:47 p.m.

**CLOSED SESSION ANNOUNCEMENT**

Mayor/Chairman Tate announced that no reportable action was taken in Closed Session.

**ADJOURNMENT**

There being no further business, Mayor/Chairman Tate adjourned the meeting at 10:48 p.m.

**MINUTES RECORDED AND PREPARED BY:**

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**IRMA TORREZ, CITY CLERK/AGENCY SECRETARY**