



# City of Sunnyvale

## Agenda Item-No Attachments (PDF)

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### REPORT TO COUNCIL

#### **SUBJECT**

Consider Options and Provide Direction to: (1) Amend Sunnyvale Municipal Code Chapter 2.30 (Appointment Process to Fill Vacancies on the City Council) to Remove Ranked Choice Voting Provisions and add Impasse Language; and (2) Council Policy 7.3.15 (Appointment of Interim Councilmembers) to Remove Ranked Choice Voting Provisions

#### **BACKGROUND**

On November 6, 2018, City of Sunnyvale voters approved an amendment to Sunnyvale Charter Section 606 that addresses vacancies in City Council seats and allows the City Council to fill certain vacancies by appointment until the next general election or special municipal election consolidated with a statewide election. Section 606(e) requires the City Council to adopt an ordinance establishing a public process for appointment. On April 23, 2019, the City Council adopted Ordinance No. 3144-19, adding Chapter 2.30 (Appointment Process to Fill Vacancies on the City Council) to the Sunnyvale Municipal Code (SMC). SMC Section 2.30.030(f) provides for individual candidate votes when Council considers four or fewer candidates for appointment and a ranked choice voting process when Council considers five or more candidates for appointment.

The ranked choice voting provisions in SMC Section 2.30.030(f) are consistent with Council Policy 7.3.15 (Appointment of Interim Councilmembers), which was originally adopted by the City Council on August 31, 2010, to address appointing an interim Councilmember to serve on a temporary basis when a Councilmember is called to active military service. If the Council opts to change the voting provisions in SMC Chapter 2.30, it may wish to align the voting provisions in Council Policy 7.3.15 for consistency.

In November 2021, Mason Fong resigned from City Council At-Large Seat No. 3. The City Council followed the provisions of Sunnyvale Charter Section 606 (Vacancies) and SMC Chapter 2.30 (Appointment Process to Fill Vacancies on the City Council) to choose an appointment process, conduct a recruitment, hold public interviews of eligible candidates, and appointed Tony Spitaleri to fill the vacancy. At various times throughout this process, several Councilmembers expressed that they wished there were alternatives to the ranked choice voting provisions required by SMC Section 2.30.030(f).

#### **EXISTING POLICY**

Sunnyvale Charter Section 606 - Vacancies

Sunnyvale Municipal Code Chapter 2.30 - Appointment Process to Fill Vacancies on the City Council (Attachment 2)

Council Policy 7.3.15 Appointment of Interim Councilmembers (Attachment 3)

## **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a “project” with the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

## **DISCUSSION**

During the February 8, 2022, Council meeting, the Mayor stated he would work with the City Manager to schedule an agenda item for a future Council meeting to discuss removing these provisions.

On April 26, 2022, the City Council reviewed draft updates to Sunnyvale Municipal Code Chapter 2.30 (Appointment Process to Fill Vacancies on the City Council) and Council Policy 7.3.15 (Appointment of Interim Councilmembers) (RTC No. 22-0029) and directed staff to return to Council with options to update SMC Chapter 2.30 and Council Policy 7.3.15 including:

1. Remove ranked choice voting provisions;
2. Language incorporating that Council will vote on each candidate and if no candidate receives four affirmative votes, Council may continue with subsequent motions;
3. Language incorporating that four or more Councilmembers may vote to initiate an impasse-breaker process lead by the City Attorney;
4. At least three options of determining which candidates would be included in an impasse-breaker process; and
5. Options for signature gathering requirements for candidates.

Staff identified various options for updating SMC Chapter 2.30 (Attachment 1) in response to the April 26 direction from Council and request direction from Council regarding the following questions:

### **Question 1: Require candidates to gather signatures from registered voters.**

**Option A:** 20 signatures for Mayor or Councilmember positions

**Option B:** 20 signatures for Mayor and 10 signatures Councilmember positions

**Option C:** Do not add signature gathering requirements

**Option D:** Other direction as provided by Council

### **Question 2: Model voting after Board/Commission appointment process or Vice Mayor appointment process.**

**Option A:** Similar to Board/Commission appointment process

Councilmembers vote yes or abstain on each candidate. Four affirmative votes are required to appoint a candidate. In the case of a tie, Council will vote on the affected applicants again, unless for or more Councilmembers initiate an impasse-breaker process described under Question 3 below. Councilmembers may support more than one candidate.

**Option B:** Similar to Vice Mayor appointment process

Candidates are nominated by Councilmembers. If more than one candidate is nominated, Council will vote on each candidate until one candidate received four or more affirmative votes. Councilmembers may support only one candidate

**Option C:** Other direction as provided by Council

### **Question 3: Impasse-breaker process options.**

#### **Option A:** Similar to Board/Commission appointment process

Should a tie between the candidates receiving the most affirmative votes occur, the affected applicants will be voted on again. If a tie still remains, the mayor will ask the City Attorney to draw the name of the person to be appointed.

#### **Option B:** Similar to Vice Mayor appointment process

In the case of a tie, a vote shall be held among all Councilmembers and the mayor to break the tie. For example, in the case of three candidates, if candidate A gets three votes, candidate B gets two votes, and candidate C gets two votes, all Councilmembers and the mayor vote on Candidates B and C. If candidate C gets the most votes, the final vote will be held between Candidates A and C.

#### **Option C1:** Equal weight drawing

If four or more Council vote to initiate this impasse-breaker process, the mayor will ask the City Attorney to draw the name of the person to be appointed. Candidates with the most affirmative votes and those with the second most affirmative votes will be included in the drawing. For example, in the case of eight candidates, if candidate A receives two votes, candidate B receives three votes, candidate C receives three votes and the remaining candidates receive zero votes, the draw will be between candidates A, B and C.

#### **Option C2:** Proportional weight drawing

If four or more Council vote to initiate this impasse-breaker process, the mayor will ask the City Attorney to draw the name of the person to be appointed. Candidates with the most affirmative votes and those with the second most affirmative votes will be included in the drawing. For example, in the case of eight candidates, if candidate A receives two votes, candidate B receives three votes, candidate C receives three votes and the remaining candidates receive zero votes, the draw will be between candidates A, B and C, with candidate A receiving two entries in the drawing and candidates B and C each receiving three entries in the drawing.

#### **Option D:** Other direction as provided by Council

After receiving direction from Council on these questions, staff will return with an Ordinance updating SMC Chapter 2.30 along with draft updates to Council Policy 7.3.15 keeping the Council Policy in alignment with the proposed SMC Chapter 2.30 updates.

### **FISCAL IMPACT**

The proposed changes to SMC Chapter 2.30 (Appointment Process to Fill Vacancies on the City Council) and Council Policy 7.3.15 (Appointment of Interim Councilmembers) do not have a fiscal impact.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Public Library, Senior Center, Community Center and in the Department of Public Safety Lobby. In addition, the agenda and report are available at the Sunnyvale Public Library, Office of the City Clerk, and on the City's website.

## **ALTERNATIVES**

1. Direct Staff to return to Council with: (1) An Ordinance updating Sunnyvale Municipal Code Chapter 2.30 (Appointment Process to Fill Vacancies on the City Council) reflecting the options selected by Council; and (2) Similar updates to Council Policy 7.3.15 (Appointment of Interim Councilmembers).
2. Direct Staff to return to Council with: (1) An Ordinance updating Sunnyvale Municipal Code Chapter 2.30 (Appointment Process to Fill Vacancies on the City Council) reflecting the options selected by Council; and (2) Similar updates to Council Policy 7.3.15 (Appointment of Interim Councilmembers), with modifications to SMC Chapter 2.30 or Council Policy 7.3.15.
3. Other direction provided by Council.

## **STAFF RECOMMENDATION**

Alternative 1: Direct Staff to return to Council with: (1) An Ordinance updating Sunnyvale Municipal Code Chapter 2.30 (Appointment Process to Fill Vacancies on the City Council) reflecting the options selected by Council; and (2) Similar updates to Council Policy 7.3.15 (Appointment of Interim Councilmembers).

Prepared by: David Carnahan, City Clerk  
Reviewed by: Teri Silva, Assistant City Manager  
Approved by: Kent Steffens, City Manager

## **ATTACHMENTS**

1. Sunnyvale Municipal Code Chapter 2.30 - Appointment Process to Fill Vacancies on the City Council-Redlined with Options
2. Sunnyvale Municipal Code Chapter 2.30 - Appointment Process to Fill Vacancies on the City Council-Clean
3. Council Policy 7.3.15 (Appointment of Interim Councilmembers)
4. Excerpt Council Meeting Minutes of 4/26/2022