



# City of Sunnyvale

## Agenda Item-No Attachments (PDF)

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### REPORT TO COUNCIL

#### **SUBJECT**

Introduce an Ordinance Amending Sunnyvale Municipal Code Chapter 2.30 (Appointment Process to Fill Vacancies on the City Council)

#### **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) mirrors existing City policy for appointment of interim Council Members and 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.

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).

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 amending the appointment process.

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 to include:

1. Removal of 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.

### **EXISTING POLICY**

Sunnyvale Charter Section 606 - Vacancies

Sunnyvale Municipal Code Chapter 2.30 - Appointment Process to Fill Vacancies on the City Council  
Council Policy 7.3.15 Appointment of Interim Councilmembers

### **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**

On July 26, 2022 (RTC No. 22-0010), the City Council directed Staff to return with:

(1) An Ordinance updating Sunnyvale Municipal Code Chapter (SMC) 2.30 (Appointment Process to Fill Vacancies on the City Council) reflecting the options selected by Council:

1. Require candidates for Mayor or Councilmember to gather 20 signatures from registered voters;
  2. Include a voting model similar to the Board and Commission appointment process;
  3. Add an impasse-breaker process that includes a proportional weight drawing; and
- (2) Similar updates to Council Policy 7.3.15 (Appointment of Interim Councilmembers).

The draft Ordinance included as Attachment 1 to the report makes the following key changes to SMC 2.30 directed by Council:

- (1) SMC Section 2.30.030(a): Adding a requirement to the application process that candidates submit 20 voter signatures to qualify as a candidate for appointment.
- (2) SMC Section 2.30.030(f)(1-2): Removing ranked choice voting and replacing with process to vote on each candidate, with Council Members able to vote in support of more than one candidate.
- (3) SMC Section 2.30.030(f)(2-3): Adding impasse-breaker process of a proportional weight drawing that includes candidates who received the most and second most votes when the Council voted on the entire candidate pool. The City Clerk will prepare the drawing and the City Attorney will draw a name. If the name drawn received four or more votes, that candidate is deemed appointed. If the name drawn received fewer than four votes, the Mayor shall call a confirming vote and the candidate shall be appointed with four or more votes. If the Council cannot confirm a candidate through this process, the drawing and confirming process will continue until the Council confirms a candidate for appointment or an alternate motion is made.
- (4) SMC Section 2.30.030(f)(4): Clarifying language that the ordinance is intended to be broadly construed to allow the Council to continue efforts to make an appointment, if it so chooses, until the deadline established in the Charter.

The updates to Council Policy 7.3.15 for appointment of interim councilmembers included as attachment 2 to the report make parallel changes so that interim appointments follow the same process for filling vacancies.

### **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 and in the Department of Public Safety Lobby. In addition, the agenda and report are available at Office of the City Clerk, and on the City's website.

### **ALTERNATIVES**

#### **Sunnyvale Municipal Code Chapter 2.30**

1. Introduce an Ordinance (Attachment 1 to the report) amending Sunnyvale Municipal Code Chapter 2.30 (Appointment Process to Fill Vacancies on the City Council).
2. Introduce an Ordinance (Attachment 1 to the report) amending Sunnyvale Municipal Code Chapter 2.30 (Appointment Process to Fill Vacancies on the City Council) with modifications.

#### **Council Policy 7.3.15**

3. Approve amendments to Council Policy 7.3.15 (Appointment of Interim Councilmembers) (Attachment 2 to the report) to align the appointment process for interim councilmembers with the appointment process for filling council vacancies.
4. Approve amendments to Council Policy 7.3.15 (Appointment of Interim Councilmembers) (Attachment 2 to the report) to align the appointment process for interim councilmembers with the appointment process for filling council vacancies with modifications.
5. Other direction as provided by Council.

### **STAFF RECOMMENDATION**

Staff makes no recommendation.

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

### **ATTACHMENTS**

1. Draft Ordinance amending Sunnyvale Municipal Code Chapter 2.30 (Appointment Process to Fill Vacancies on the City Council)
2. Draft Council Policy 7.3.15 (Appointment of Interim Councilmembers)-Redlined
3. Draft Council Policy 7.3.15 (Appointment of Interim Councilmembers)-Clean