



City of Sunnyvale

Notice and Agenda City Council

Monday, November 22, 2021

5:00 PM

Telepresence Meeting: City Web Stream |
Comcast Channel 15 | AT&T Channel 99

Special Meeting: Public Hearing/General Business - 5 PM

Meeting online link: <https://sunnyvale-ca-gov.zoom.us/j/96111580540>

Special Teleconference Notice

Because of the COVID-19 emergency and the “shelter in place” orders issued by Santa Clara County and the State of California, this meeting of the Sunnyvale City Council will take place by teleconference, as allowed by Government Code Subdivision 54953(e) and Resolution No. 1089-21 (reaffirmed November 16, 2021).

Public Participation

- *Watch the City Council meeting on television over Comcast Channel 15, AT&T Channel 99, at <http://youtube.com/SunnyvaleMeetings> or <https://sunnyvaleca.legistar.com/calendar.aspx>*
- *Submit written comments to the City Council up to 4 hours prior to the meeting to council@sunnyvale.ca.gov or by mail to City Clerk, 603 All America Way, Sunnyvale, CA 94086.*
- *Teleconference participation: You may provide audio public comment by connecting to the teleconference meeting online or by telephone. Use the Raise Hand feature to request to speak (*9 on a telephone):*

Meeting online link: <https://sunnyvale-ca-gov.zoom.us/j/96111580540>

Meeting call-in telephone number: 833-548-0276 | Meeting ID: 961 1158 0540

Accessibility/Americans with Disabilities Act (ADA) Notice

Pursuant to the Americans with Disabilities Act (ADA), if you need special assistance to provide public comment, or for other special assistance; please contact the City at least 48 hours prior to the meeting to enable the City to make reasonable arrangements to ensure accessibility to this meeting. The Office of the

City Clerk may be reached at 408-730-7483 or cityclerk@sunnyvale.ca.gov (28 CFR 35.160 (b) (1)).

5 P.M. SPECIAL COUNCIL MEETING

CALL TO ORDER

Call to Order via teleconference.

ROLL CALL

PUBLIC HEARINGS/GENERAL BUSINESS

If you wish to speak to a public hearing/general business item, please refer to notice at the beginning of this agenda. Each speaker is limited to a maximum of three minutes. For land-use items, applicants are limited to a maximum of 10 minutes for opening comments and 5 minutes for closing comments.

[21-0937](#)

Discussion Regarding Next Steps Related to Councilmember Mason Fong's Resignation and Direction Regarding the Date to Declare the Vacancy in City Council Seat No. 3

Recommendation: Staff makes no recommendation. This report is developed to facilitate a conversation by the City Council regarding when to declare Councilmember Mason Fong's Council Seat vacant and provide direction on next steps to fill the vacancy.

ADJOURN SPECIAL MEETING

NOTICE TO THE PUBLIC

The agenda reports to council (RTCs) may be viewed on the City's website at sunnyvale.ca.gov after 7 p.m. on Thursdays or in the Office of the City Clerk located at 603 All America Way, prior to Tuesday City Council meetings. Any agenda related writings or documents distributed to members of the City of Sunnyvale City Council regarding any open session item on this agenda will be made available for public inspection in the Office of the City Clerk located at 603 All America Way, during normal business hours and in the Council Chamber on the evening of the Council Meeting, pursuant to Government Code §54957.5. Please contact the Office of the City Clerk at 408-730-7483 to access City Hall to view these materials and for specific questions regarding the agenda.

PLEASE TAKE NOTICE that if you file a lawsuit challenging any final decision on

any public hearing item listed in this agenda, the issues in the lawsuit may be limited to the issues which were raised at the public hearing or presented in writing to the Office of the City Clerk at or before the public hearing.

PLEASE TAKE FURTHER NOTICE that Code of Civil Procedure section 1094.6 imposes a 90-day deadline for the filing of any lawsuit challenging final action on an agenda item which is subject to Code of Civil Procedure 1094.5.

Planning a presentation for a City Council meeting?

To help you prepare and deliver your public comments, please review the "Making Public Comments During City Council or Planning Commission Meetings" available at <http://Sunnyvale.ca.gov/PublicComments>

Planning to provide materials to Council?

If you wish to provide the City Council with copies of your presentation materials, please provide 12 copies of the materials to the Office of the City Clerk. The City Clerk will distribute your items to the Council.

Upcoming Meetings

Visit <https://sunnyvaleca.legistar.com> for upcoming Council, board and commission meeting information.



City of Sunnyvale

Agenda Item

21-0937

Agenda Date: 11/22/2021

REPORT TO COUNCIL

SUBJECT

Discussion Regarding Next Steps Related to Councilmember Mason Fong's Resignation and Direction Regarding the Date to Declare the Vacancy in City Council Seat No. 3

BACKGROUND

Resignation

Mason Fong, who was elected to the City Council on November 6, 2018 and served a term to expire January 3, 2023, has submitted a letter of resignation from the Council, effective November 14, 2021 (Attachment 1).

Former Councilmember Fong was elected by the voters of Sunnyvale in 2018 to at-large Council Seat No. 3. As part of the City's transition to district-based Council elections, Seat Nos. 1, 2 and 3 will cease to exist when candidates are sworn in to represent Council Districts 1, 3 and 5 after the November 8, 2022 Election.

Charter Section 606

Sunnyvale Charter Section 606 (Attachment 2) was amended when more than 71% of voters approved proposed changes in 2018. The Amendment followed a special election in August 2016 to fill a vacancy on the Council, which was required under the then-existing provisions of the Charter. The total cost of the 2016 special election was approximately \$794,978, and voter turnout was just 23%. The City Council subsequently formed of a Charter Review Commission (the "CRC") to review the City's existing rules related to City Council vacancies and make recommendations for revisions to the City Council vacancy provisions in the Charter. The CRC's April 26, 2018 Final Report and Recommendations (Attachment 8) includes a discussion of the following guiding parameters the CRC applied to prepare the language in Section 606:

- The process for filling a vacancy should be uniform regardless of the reasons for how a seat was became vacant.
- A Council seat should not be left vacant for an extended period of time.
- Appointments should be as short a duration as possible.
- No more than two Council members at a time could be appointed.
- While Council should be able to make a choice between a special election and an appointment, not making a choice is not an option. Council inaction forces a special election.
- While fiscal responsibility is important, money spent on elections can be a very good investment.
- Higher voter turnout is considered to be better.

- Whenever possible, avoid having five seats up for election at the same time.

Generally, the City Council must declare a Council seat vacant within 30 days of the effective date of the resignation (Charter section 606(b)). Within 60 days of declaring the vacancy, the City Council must fill the vacancy by appointing someone to the vacant seat, or by calling a special election to fill the seat (Charter section 606(c)).

If the City Council chooses to hold an election instead of making an appointment to fill the vacancy or fails to make an appointment within the 60-day period, Subsection 606(f) requires the City Council to call for an election to take place within 240-days of declaring the seat vacant.

The Council has options for declaring the seat vacant and filling the vacancy. The differences between these options relate to the Charter deadlines for taking action as well as the statutory deadlines for calling elections. This report provides information on those options, provides timelines based on possible actions the Council may choose to take, and seeks direction on the date the Council will declare the vacancy.

Sunnyvale Municipal Code Chapter 2.30

In 2019, the City Council adopted Sunnyvale Municipal Code Chapter 2.30 (Appointment Process to Fill Vacancies on the City Council) (Attachment 3), as required by section 606(e) of the Charter, which specifies that the Council must adopt an ordinance describing a public process to fill a Council vacancy by appointment. If the Council chooses to fill this vacancy by appointment, it will be required to follow the provisions of Chapter 2.30, which requires public notice of a set application period, public access and publication of applications received, and public meetings of the City Council that allow public comment and questions before interviews are conducted prior to making an appointment.

EXISTING POLICY

Sunnyvale Charter Section 606 (Vacancies) (Attachment 2)

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

Step One: Declare Vacancy and Choose to Pursue Appointment and/or Election

The first step of the vacancy process is for the City Council to declare the vacancy within 30 days-in this case no later than December 14, 2021. Upcoming meetings at which the Council could declare the vacancy are November 30, December 7, and December 14.

Step Two: Consider Appointment or Election to Fill the Vacancy

The timing of the date of the vacancy declaration has important consequences because of the subsequent deadlines established by the Charter and the California Elections Code to call elections. The Council has the option to fill the vacancy by appointment or election. However, some appointment scenarios would also require an election to comply with the Charter, and different election dates will have significantly different costs.

Appointment Scenarios

Section 606(d) of the Charter provides that if the vacancy is filled by appointment, “the appointee shall hold office until the next General Municipal Election or Special Municipal Election consolidated with the next statewide election, whichever occurs sooner, and a successor is elected and qualified.” In this case, the next statewide election is the June 7, 2022 primary, and the deadline for calling that election is February 2, 2022.

Thus, if the Council appoints someone to fill the vacancy before February 2, 2022, the City will still be required to hold an election to fill the vacancy on June 7, 2022. The appointed Councilmember would serve until the Councilmember elected on June 7 assumes office. The elected Councilmember would serve until the vacant term ends on January 3, 2023, when the person elected in November 2022 would begin their term.

If the Council appoints someone to fill the vacancy after February 2, 2022, the City will have missed the deadline to consolidate with the next statewide election (June 7, 2022) and an election to fill the vacancy would not be required to hold an election under Charter section 606(d) because the November 2022 statewide election is the City’s general election.

Based on the timing of the vacancy and the dates for consolidating with the next statewide election, the Council’s options if it wishes to appoint someone to fill the vacancy are:

- (1) If the Council declares the vacancy on November 30, it could appoint but would then also be required to hold an election consolidated with the June 2022 statewide election. The appointee would only hold office until the person elected in June takes office, which is estimated to be July 12, 2022.
- (2) If the Council declares the vacancy on December 7, it could appoint someone to fill the vacancy before or after February 2. If the appointment occurred on or before February 2, the City would still be required to hold an election as described in scenario #1. If the appointment occurred after February 2, the City would not be required to hold an election in June. However, because the Charter requires the Council to make an appointment within 60 days of declaring the vacancy, the Council would have to make the appointment no later than February 5, 2022. The person appointed after February 2 would serve until a successor is elected in November 2022 and sworn into office in January 2023.
- (3) If the Council declares the vacancy on December 14, the same scenario as #2 above would occur, except that the Council would have slightly more time to make the appointment; until February 12, 2022.

If the Council discussion at this meeting indicates that the Council may be interested in appointment, it would be helpful to provide direction on whether the desired appointment date would be before or after February 2, so that Staff can develop and bring forward materials, recommendations, and a timeline for the appointment process for the Council to approve concurrent with the vacancy declaration.

Election-Only Scenarios

If the City Council chooses to forego the option to make an appointment and instead fill this Council vacancy by election, or for some reason fails to make an appointment within the required timeframe, the Council would be required to hold an election, and to choose an election date in April, June or some other date for a standalone election that occurs within 240 days of the date the vacancy is declared. The elected Councilmember would serve until the vacant term ends and a successor is sworn in on January 3, 2023.

The least expensive date to hold an election would be June 7, 2022, with an estimated cost of \$227,188. The Registrar of Voters has 30 days after an election to certify the results of the election. A candidate elected on June 7, 2022 would likely assume office at the July 12, 2022 City Council meeting and serve until the vacant term ends on January 3, 2023.

Holding an election on April 12, 2022, would require the Council to act quickly to call the election by December 8, 2021, and has an estimated cost of between \$1,937,773 and \$3,148,882. This option would result in the elected candidate likely assuming office at the May 24, 2022 City Council meeting and serving until the vacant term ends on January 3, 2023. Because the deadline to call an election for April 12, 2022 is December 8, 2021, the April 2022 election option would only be feasible if the Council decides it does not want to appoint and wants to immediately call an election for the soonest date available.

A stand-alone election, similar to the one that occurred in 2016, would have the same estimated cost as the April election, and would result in the elected candidate likely assuming office 30 to 45 days after the election date and serve until the vacant term ends on January 3, 2023. A stand-alone election would be required if the Council failed to fill the vacancy by appointment and missed the February 2, 2022 deadline to consolidate with the statewide primary election.

Attachments 4 to 7 provide visual timelines outlining the options open to the City Council if at large Council Seat No. 3 is declared vacant on November 30, December 7, or December 14.

FISCAL IMPACT

Selecting the date to declare at large Council Seat No. 3 vacant does not have a fiscal impact; however, the date selected provides the City Council with different options to potentially call for an election. If an election is called, the cost to conduct an election could be between \$227,188 and \$3,148,882 or more depending on the date of the election and whether the election could be consolidated with other elections.

PUBLIC CONTACT

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

ALTERNATIVES

1. Discuss the options and potential priorities for filling the vacancy in the At-Large Seat No. 3, and direct staff to return on one of the following dates to declare Councilmember Fong's seat vacant: (1) November 30, (2) December 7, or (3) December 14.
2. If the Council directs that the vacancy should be declared on December 14, provide further direction on the timeline for an appointment process, considering the February 2, 2022 deadline to consolidate with the statewide primary election and the impacts of missing that deadline on the process to fill the vacancy.
3. Other direction as provided by Council.

STAFF RECOMMENDATION

Staff makes no recommendation. This report is developed to facilitate a conversation by the City Council regarding when to declare Councilmember Mason Fong's Council Seat vacant and provide direction on next steps to fill the vacancy.

Prepared by: David Carnahan, City Clerk

Reviewed by: Teri Silva, Assistant City Manager

Approved by: Kent Steffens, City Manager

ATTACHMENTS

1. Mason Fong - Formal Letter of Resignation from the Sunnyvale City Council
2. Sunnyvale Charter Section 606 - Vacancies
3. Sunnyvale Municipal Code Chapter 2.30 - Appointment Process to Fill Vacancies on the City Council
4. Scenario: Declare Vacancy on November 30, 2021
5. Scenario: Declare Vacancy on December 7, 2021
6. Scenario: Declare Vacancy on December 14, 2021
7. Draft Recruitment Schedule if Appointment Process is Desired
8. Charter Review Committee Final Report and Recommendations - April 26, 2018



456 West Olive Avenue
Sunnyvale, CA 94088-3707

408-730-7473
TDD/TYY 408-730-7501
sunnyvale.ca.gov

November 1, 2021

Dear Honorable Mayor, Vice Mayor and City Council Colleagues,

It is with great sorrow that I submit my formal letter of resignation with a resignation date of November 14, 2021 from my role as the Sunnyvale City Councilmember for at-large Seat 3.

I have been appointed by California Governor Gavin Newsom to serve as his Deputy Director of External Affairs for all of Northern California, and I will be resigning to avoid any potential and perceived conflict of interest. This news is bittersweet as I will not be able to serve in decision making matters as a City Councilmember, however, I will be able to serve Sunnyvale at the statewide level, elevating those issues dear to Sunnyvale to the Office of the Governor. In this new role, I will serve as the Governor's liaison to Northern California communities helping to communicate and translate their priorities into action.

Larry Klein
Mayor

Glenn Hendricks
Vice Mayor

Gustav Larsson
Councilmember

Russ Melton
Councilmember

Mason Fong
Councilmember

Alysa Cisneros
Councilmember

Omar Din
Councilmember

It has been my great honor and privilege to serve Sunnyvale for the past three years helping to address issues relating to housing affordability, climate action, transportation, financial sustainability, equity, smart cities and so much more. In just three short years, I have been privileged to have led the efforts with the support of my colleagues on several efforts including but not limited to:

- Adding as a Citywide Council Strategic Priority: Equity, Access & Inclusion, and hiring a full time Equity, Access & Inclusion, Manager to craft a citywide equity strategy
- Establishing the Sunnyvale Cares Program to fundraise over \$3 million in financial relief funds to Sunnyvale small businesses and nonprofits suffering from economic hardships related to the COVID-19 Pandemic
- Adding to the approved Downtown Sunnyvale Cityline project both a community space free of rental costs for qualified community organizations as well as 3 months of VTA Transit passes for Below Market Rate tenants
- Hiring a consultant to establish a formal smart cities initiative, utilizing technology to improve the quality of life for Sunnyvale residents and businesses
- Studying a potential up to 20,000 new housing units and 500,000 sq ft of commercial/retail space in Moffett Park, which would help to address the jobs to housing ratio within the economic core of the city while also leading to increased revenue
- Working towards increased access to public transit as Sunnyvale's representative on the VTA Policy Advisory Committee

- Studying how best to address workforce development initiatives by the City to develop the next generation of public service employees through hiring programs with local high school and college students

Although there are many future projects and policies that I will not be able to vote on, I leave with the utmost confidence in my Council colleagues to ensure Sunnyvale continues to strive towards a livable city, accessible to all. I also have confidence that the Council will do what is best for the voters of Sunnyvale in determining whether to appoint a replacement for my seat or call for a special election. I leave the Council thankful to the past Charter Review Commission and City Council who created the draft language for Measure L in 2018 that the voters ultimately passed with over 71% of the vote, creating a pathway to an appointment process of a Council vacancy that can avoid a costly special election.

I wish my colleagues the best, and I look forward to serving Sunnyvale in my new capacity in the Governor's Office of External Affairs.

Sincerely,



Mason R. Fong

CC: City Manager Kent Steffens
City Attorney John Nagel
Sunnyvale Community Members

Sunnyvale Municipal Code

[Up](#) [Previous](#) [Next](#) [Main](#) [Search](#) [Print](#) [No Frames](#)

[CHARTER OF THE CITY OF SUNNYVALE](#)
[Article VI The Council](#)

Section 606. Vacancies.

(a) In addition to any other cause from which vacancies in the City Council may occur, the office of the Mayor or Councilmember shall become vacant when that official:

(1) Resigns or dies;

(2) Is absent from all regular meetings of the Council for a period of sixty days consecutively from and after the last regular Council meeting attended by such member, unless by permission of the Council expressed in its official minutes;

(3) Is convicted of a crime involving moral turpitude;

(4) Ceases to be an elector of the City of Sunnyvale;

(5) Ceases to maintain his/her principal place of residence within the City limits, and/or within the applicable District boundaries for a member elected by District, during such official's term of office; or

(6) Is involuntarily removed pursuant to Article II of the Constitution of the State of California, as may be amended from time to time.

(b) In the event of a vacancy in the office of Mayor or Councilmember, the Council shall officially declare the office vacant within thirty days of the commencement of any vacancy.

(c) Within sixty days of the date the office is officially declared vacant, the City Council shall, by affirmative vote of at least four of the remaining Councilmembers, elect to fill the vacancy by appointment or by calling an election.

(d) If the vacancy is filled by appointment, the appointee shall hold office until the next General Municipal Election or Special Municipal Election consolidated with the next statewide election, whichever occurs sooner, and a successor is elected and qualified. The Councilmember then elected shall serve for the remainder of any unexpired term, and until a successor is elected and qualified.

(e) The City Council shall adopt an ordinance establishing a public process for appointment.

(f) If the City Council elects to fill the vacancy by election or fails to fill the vacancy by appointment, it shall call an election to be held within two hundred and forty days of the date the vacancy is declared.

(g) Notwithstanding any other provision of this section, the City Council shall not make an appointment to fill a vacancy if the appointment would result in more than two Council members or one Councilmember and the Mayor currently serving on the Council as appointees, and shall call a Special Municipal Election to be held within one hundred and eighty days from the date the Council declares the vacancy. (Amended effective December 31, 1975, December 21, 1976, December 23, 1982, January 17, 1992, December 21, 2018 and May 7, 2020 and May 7, 2020: previously Section 703)

View the [mobile version](#).

Sunnyvale Municipal Code

[Up](#) [Previous](#) [Next](#) [Main](#) [Collapse](#) [Search](#) [Print](#) [No Frames](#)[Title 2. ADMINISTRATION AND PERSONNEL](#)**Chapter 2.30. APPOINTMENT PROCESS TO FILL VACANCIES ON THE CITY COUNCIL**

2.30.010. Purpose and intent.

The purpose of this chapter is to implement the requirement of city of Sunnyvale Charter Section 604(e) by establishing a public process for appointment to fill vacancies on the city council when appointment is authorized by the City Charter. (Ord. 3144-19 § 1).

2.30.020. Applicability.

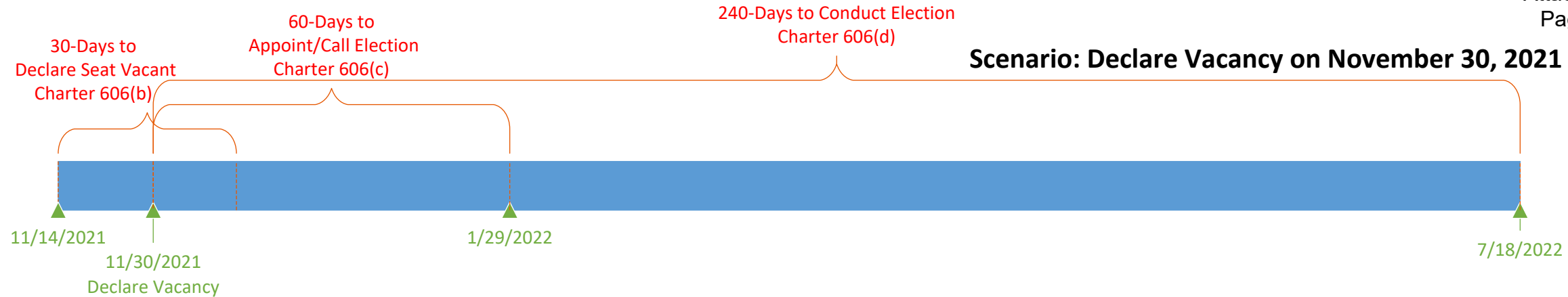
This chapter applies to appointments permitted under Charter Section 604 to fill vacancies on the city council when the city council has elected to fill such vacancy by appointment, and is intended to be consistent with Sunnyvale Charter Section 604. To the extent there is any conflict between the Charter and this chapter, the terms of the Charter shall govern. (Ord. 3144-19 § 1).

2.30.030. Public process for city council appointments.

The following process shall be used to fill a city council vacancy by appointment:

- (a) **Application Period.** At the meeting at which the city council determines to fill a vacancy by appointment, it shall establish application requirements and set an application period for receiving applications and interviewing candidates seeking appointment to the vacant seat.
- (b) **Public Notice of Application Period.** The city clerk shall post the application period and application on the city's website and may also notify the public of the vacancy by other methods in accordance with then applicable practices commonly used by the city for providing broad public notice.
- (c) **Public Applications.** The city clerk shall distribute the candidates' applications to the city council and shall make the statements available to the public.
- (d) **Public Interviews.** The council shall hold an open and public meeting to interview all eligible candidates. The interview process shall be structured to allow the public to ask questions or provide comment before the interviews.
- (e) **Public Hearing on Interviews.** The council shall hold a public hearing to receive public comment after the interviews and prior to making the appointment.
- (f) **Voting on Appointment.** Following the public hearing, the council shall vote on the appointment as follows:
 - (1) If there are fewer than five candidates, the mayor shall announce each candidate's name. Council will vote on each candidate. Should a tie between the candidates receiving the most affirmative votes occur, the affected applicants may be voted on again.
 - (2) If there are five or more candidates, the mayor shall ask each councilmember to rank the candidates from first choice to last choice on a written ballot. The mayor may choose to recess the meeting while the city clerk counts the ballots. If one candidate receives four or more first choice votes, that candidate shall be declared to be appointed. If not, and one candidate has received the fewest first-choice votes, that candidate shall be eliminated, with his or her votes reassigned to the voters' second-choice candidates. If multiple candidates have tied for the fewest first-choice votes by receiving only one vote each, they shall be eliminated and their votes reassigned in the same manner. If multiple candidates have tied for the fewest first-choice votes by receiving two votes each, whichever one of them has received the fewest second-choice votes shall be eliminated and the votes reassigned. If multiple candidates have tied for the fewest first-choice votes by receiving two votes each, and have the same number of second-choice votes, the clerk shall call for a tiebreaker vote between those candidates, with the loser of the tiebreaker being eliminated and having his or her first-choice votes reassigned. The counting process shall continue until one candidate has at least four votes and is declared to be appointed. The city clerk shall announce the result of the voting.
 - (3) Any appointment requires at least four affirmative votes pursuant to Charter Section 604(c). (Ord. 3144-19 § 1).

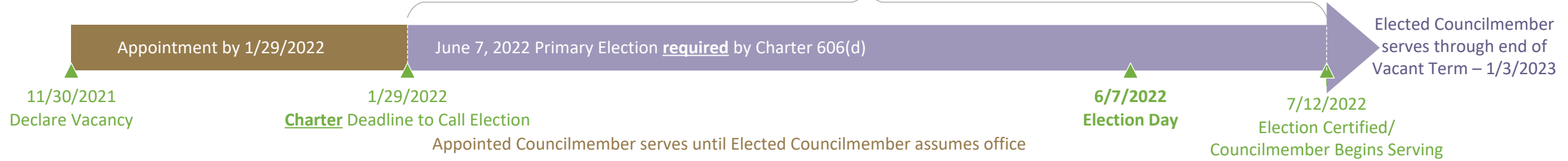
Scenario: Declare Vacancy on November 30, 2021



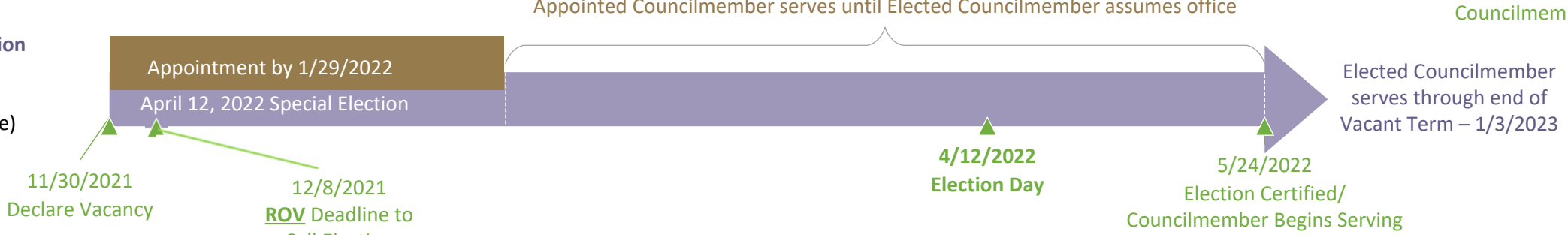
Option 1
June 2022 Election
Least expensive election option



Option 2
Appointment + Required Election
Least expensive election option



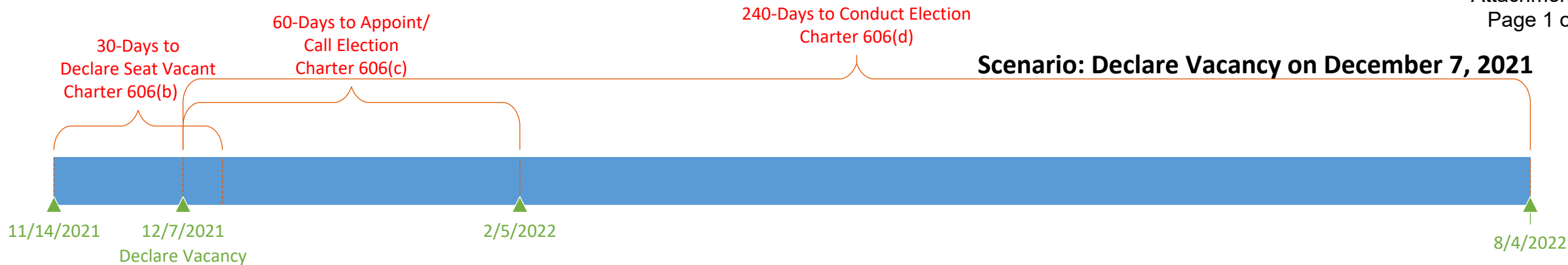
Option 3
Appointment + Election
Most expensive election option (same as stand-alone)



Option 4
April 2022 Election
Most expensive election option (same as stand-alone)



Scenario: Declare Vacancy on December 7, 2021

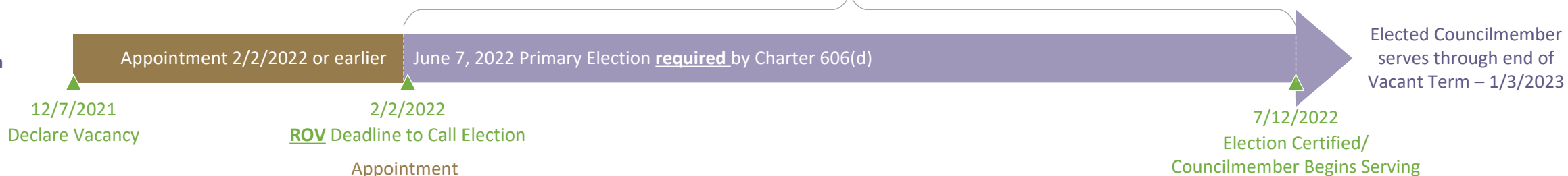


Option 1
June 2022 Election
Least expensive election option



Appointed Councilmember serves until Elected Councilmember assumes office

Option 2
Appointment + Required Election
Least expensive election option

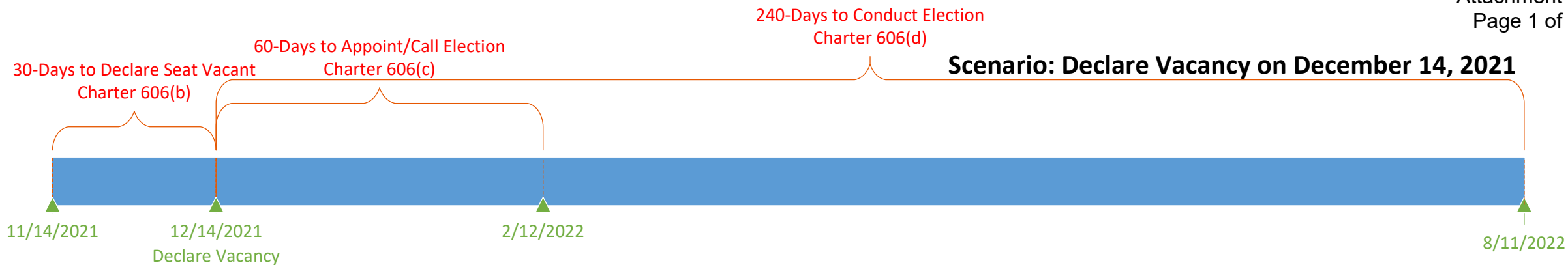


Option 3
Appointment

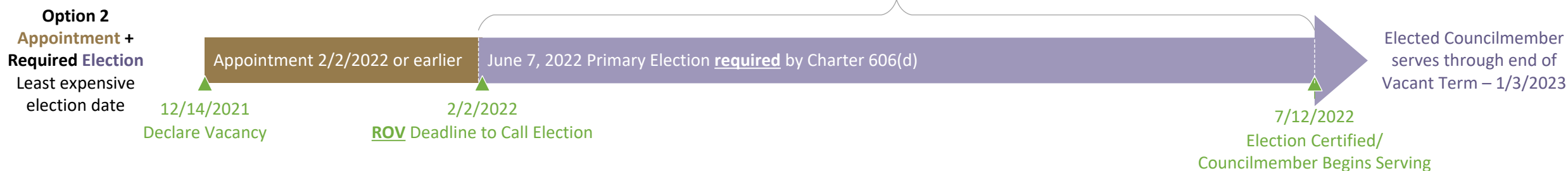


Option 4
April 2022 Election
Most expensive election option (same as stand-alone)



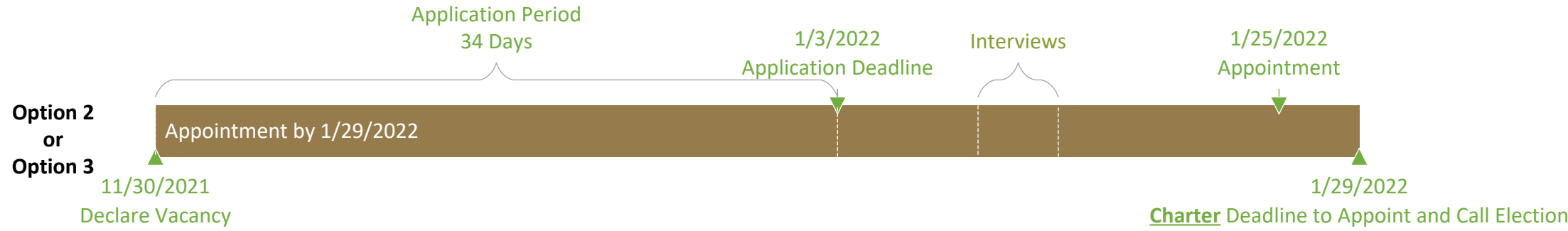


2/2/2022 - 7/12/2022
Appointed Councilmember serves until Elected Councilmember assumes office

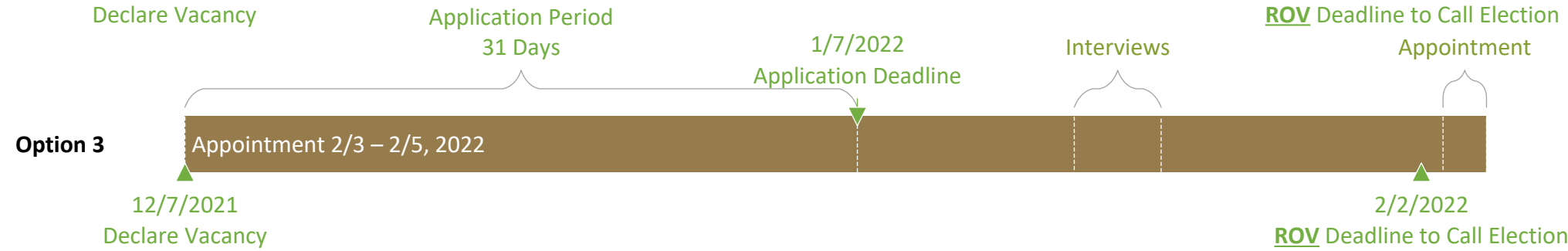
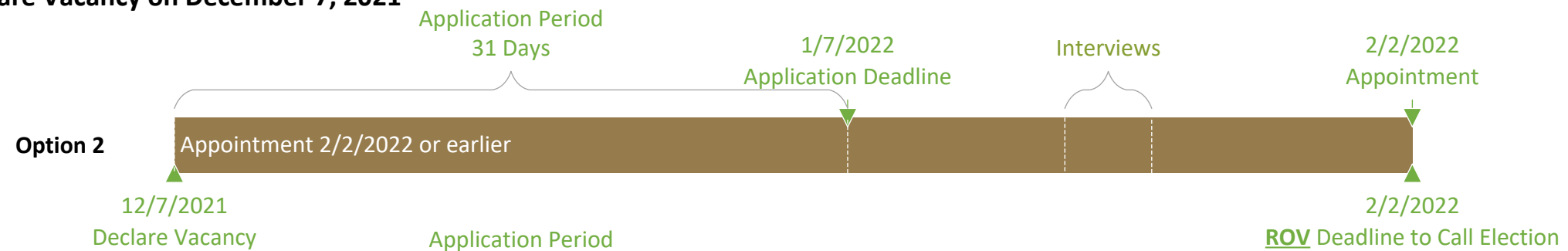


Draft Recruitment Schedule if Appointment Process is Selected

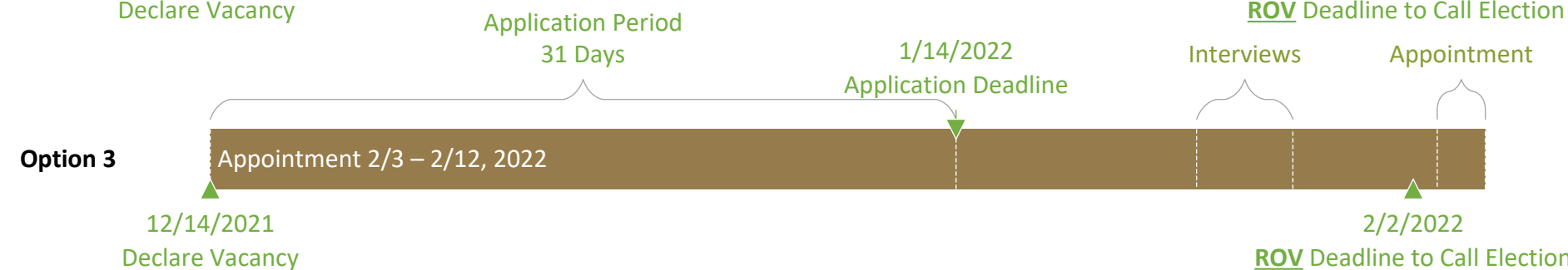
Scenario: Declare Vacancy on November 30, 2021



Scenario: Declare Vacancy on December 7, 2021



Scenario: Declare Vacancy on December 14, 2021



CITY OF SUNNYVALE



**2018
CHARTER REVIEW COMMITTEE**

Final Report and Recommendations

Dated April 26, 2018

2018 CHARTER REVIEW COMMITTEE

Final Report and Recommendation

Introduction and Background

This Final Report and Recommendation ("Report") contains the findings and recommendations of the 2018 Charter Review Committee ("Committee") for consideration by the Sunnyvale City Council ("Council"). The Report includes a summary of the major points the Committee discussed for amending the Sunnyvale City Charter ("Charter") Section 604 (Filling Vacancies in Council Seats). A more detailed synopsis of the comments and discussion on each Charter issue is in the minutes of the meetings, which are attached to this Report as Attachment 6 (2018 Charter Review Committee Meeting Minutes).

The Council initiated a review of the Charter on filling vacancies in Council seats with the selection of an 11 member Committee. The Council charged the Committee to review only this Charter issue.

The Council solicited applications for the Committee and received 17 applications. The Committee members are:

Lawrence Stone, Chair
Carol Weiss, Vice
Linda Davis
Hannalore Dietrich
Melinda Hamilton
Dawn Hopkins
John Howe
Marc Ketzell
Richard Mehlinger
Amanda Richey
Jack Walker

Sunnyvale City Attorney, John Nagel ("City Attorney"), Assistant City Attorney, Melissa Tronquet ("Assistant City Attorney"), City Clerk, Kathleen Franco Simmons ("City Clerk"), and Assistant City Manager, Teri Silva ("City Manager"), staffed the Committee.

The Committee reviewed the Charter with an expedited meeting schedule in order to meet the Council's requested timeline. After approximately four months of review and eight meetings, the Committee submits its findings and recommendations herein to the Council. In order to enact any changes to the Charter, Council will need to place a ballot measure on the November 2018 ballot, which will require a majority vote in the citywide election to pass.

Public Comment Opportunities

The Committee provided notice and an agenda for its meetings as required by the Brown Act.

Structure of Recommendations

The Committee studied the one issue for the Council. The issue is as follows:

1. To analyze and propose alternatives for amending Charter Section 604 (Filling Vacancies in Council Seats).

COMMITTEE RECOMMENDATIONS

1. Introduction to the Committee's Recommendation

The Committee was appointed by the Council to review Charter Section 604. Pursuant to the Charter Section 604, when a Council vacancy occurs, the Council must officially declare the seat vacant within 30 days and call a special municipal election to fill the vacancy for the unexpired term. Other provisions apply when the vacancy is created by the death or other involuntary removal of the member. The Charter allows the Council to consolidate a special municipal election with a general municipal or statewide election if the City's next general municipal or statewide election is scheduled within 180 days of the declaration of the vacancy.

The Committee recommends a "hybrid" model for filling vacancies that gives the Council the power to decide whether to make an interim appointment or hold a special election to fill the vacancy. The Committee further recommends that appointments be limited in duration until the next regularly scheduled election to ensure that the citizens of the City elect each Council member and avoid long-term appointments. By giving the Council the option to appoint or hold a special election, the Committee believes the Council will be able to fill vacancies in the best manner possible given the circumstance and timing of the vacancy while balancing costs and democratic principles.

In recommending the hybrid model, the Committee came up with some guiding parameters in deciding how to determine the policy. In no particular order, the following parameters inform our policy recommendation:

- The process for filling a vacancy should be uniform regardless of the reasons for how a seat was became vacant.
- A Council seat should not be left vacant for an extended period of time.
- Appointments should be as short a duration as possible.
- No more than two Council members at a time could be appointed.
- While Council should be able to make a choice between a special election and an appointment, not making a choice is not an option. Council inaction forces a special election.
- While fiscal responsibility is important, money spent on elections can be a very good investment.

- Higher voter turnout is considered to be better.
- Whenever possible, avoid having five seats up for election at the same time.

Some of these parameters can be in conflict — especially the financial considerations with the others — and the Committee exercised its best judgment on which parameters to prioritize at a given time. The Committee did its best to make a recommendation that the Committee believes balances each of these priorities.

The Committee, by a 11-0 vote, recommends the proposed amendment to Charter Section 604 provided in Attachment 1 (Proposed Amendment to Section 604 Filling of Vacancies in Council Seats).

2. The August and November Elections in 2016

On April 4, 2016, Council member Dave Whittum, whose term was due to end that November, resigned from Council seat 4 (“Seat 4”) with immediate effect. Due to the timing of the vacancy, the City could not consolidate the special municipal election with the November general election. Current Charter Section 604 required the City to call a special election that August, which cost \$799,742 and had a voter turnout of 23%. The special election filled Seat 4 for four months. In November, four seats were up for reelection for a four-year term, including Seat 4. The election cost \$452,158 and had a voter turnout of 67%.¹

3. 1975 Adoption of Current Charter Section 604

The current language of Charter Section 604 was designed by a Charter study committee in 1975 in response to a voter-led initiative petition to require Council vacancies be filled by election, except in the case of a death resulting in an unexpired term of six months or less. The petition was in response to a large number of vacancies and appointments at a single time.

Prior to 1975, with no term limits, an incumbent Council member could resign shortly before retiring, allowing the remaining Council to appoint a replacement. The appointee would have a significant advantage of incumbency in the next election and, therefore, it was extremely rare for an appointee incumbent to be defeated prior to 1975. In April 1975, this practice resulted in four of the seven Council members originally joining the Council as appointees.

The intended purpose of the measure was to ensure that no citizen could become a member of the Council without election. By electing officials, the selection of Council members belonged to the people, thereby fostering more responsiveness to the electorate and preventing the Council from unduly influencing its own makeup through the appointment process.

Opponents of the 1975 initiative expressed concern over the considerable costs associated with holding special elections. Ballot arguments against the initiative

¹ The turnout for the November general election was 85%, but only 67% of voters voted on Seat 4. There were 28,597 more City voters that participated in the November general election for Seat 4 than in the standalone special election in August.

estimated the cost of special elections to be \$25,000 in 1975, which would be \$111,000 adjusted for inflation in 2016. Proponents of the 1975 initiative expressed support because they believed Council members are more responsive to the electorate if elected rather than appointed and due to a desire to return the selection of Council members to the people.

Voters ultimately passed the 1975 initiative by 51% in November 4, 1975. The Charter was further amended in 1976 to reorganize the Charter, in 1982 regarding Council residency, and again 1991 to allow for appointments in the case of involuntary vacancies.

4. Current Charter Language (Section 604)

Under the current requirements for filling a vacancy under Section 604 of the Charter, as shown in Attachment 2 (Current Section 604 (Filling of Vacancies in Council Seats), the Council shall officially declare the seat vacant and call a special municipal election to fill the unexpired term. The Council must hold a special municipal election within 120 days from the Council declares the vacancy and such special municipal election shall be consolidated with a general municipal or statewide election if a municipal or statewide election is scheduled within 180 days from the date that vacancy is declared. The only exception to this process is that the Council may appoint someone to fill a vacancy when the vacancy is a result of death or an involuntary removal of the member pursuant to Section 4, Article II of the California Constitution. In which case, the Council may appoint if the remaining term does not exceed 180 days. In this case, the Council must fill the vacancy by appointment within 60 days after the Council declares the seat vacant. If the Council fails to fill the vacancy within the 60-day period, then the Council must treat the vacancy in the same manner as a vacancy caused by any other cause and call a special election.

While the Charter provides for the Council to consolidate a special election with a general municipal or statewide election if such general or statewide election is within 180 days of the declared vacancy, the window to consolidate is narrower due to the California Elections Code. The California Elections Code requires a nomination period that opens 113 days and closes 88 days before an election.² This requires a vacancy to occur within two narrow timeframes in a two-year election cycle in order for the Council to consolidate the election with either a general municipal or statewide election – a 56-day or a 138-day window, totaling only 194 days over a two-year election cycle for potential consolidation. As shown in Attachment 3 (Consolidated Elections under Current Charter Section 604), it is more likely a vacancy will occur outside of these two narrow windows given the City’s even-year election cycle – a vacancy that occurs on the other 536 days over a two-year election cycle will result in a standalone special election.

Under the Charter’s current language, a vacancy occurring on 74% of the possible dates would mandate a standalone special election. Since 1975, there have been four special elections to fill unscheduled vacancies in the Council: March 12, 1985, November 8, 1988, January 22, 1991, and August 16, 2016.

² See Election Code Sections 10220 and 10407.

5. The Impact of Changing from Odd- to Even-Years for Municipal Elections on Section 604

The City held regular municipal elections in odd-years through 2013. In the last odd-year election, 72% of City voters approved a Charter amendment switching City elections to even-years starting in 2016. The City proposed this measure to save money on elections. The City’s election costs had increased over recent decades because other cities and school districts moved to even-year elections, which left fewer and fewer local governments to share the costs of odd-year elections.

Although the change to even-year elections saves the City money on its regular elections, it also increased the chance of a high-cost standalone special election to fill a vacancy. As Section 4 of this Report identified, there are now just 194 days or about 6.5 months in two years when a vacancy can occur and the resulting special election may be consolidated with another election. When the City had odd-year City elections, consolidation was possible for vacancies occurring during about 3 months more of the two years. This decrease in consolidation windows from changing to even-year elections increased the risk of high-cost standalone special elections.

In addition to cost savings, changing to even-year elections also positively impacted voter participation in City elections. Over the five odd-year November elections from 2005 to 2013, an average of 39% of the City’s voters cast a ballot, and about 35% voted in Council races. In the first even-year municipal election in November 2016, nearly 85% of City voters cast a ballot, and about 66% of City voters voted in Council races. Even though some did not vote on Council elections, voter participation in Council races increased by over 30% in 2016. That translates into roughly 19,000 more voters participated in electing Council members in 2016 relative to the previous odd-year elections.

The differences are greater when comparing regular Council elections with a standalone special election to fill a vacant Council seat. Voter turnout for the August 2016 special election was especially low with only 23% participation. The difference in voter participation between the August standalone special election for Seat 4 and the November regular election for the same seat was 44%; 28,507 fewer voters cast a ballot for Seat 4 in August than in November.

When analyzing both voter participation and cost, the different options for a special election to fill a Council vacancy rank best to worst as follows:

Rank	Cost	Voter Turnout	Special Election Option
1	Lowest cost	Highest voter turnout	Consolidated with a November even-year election (general elections)
2	Lower cost	Higher voter turnout	Consolidated with a March or June even-year election (primary election)
3	Highest cost	Lowest voter turnout	Standalone special election

Although there are other considerations, cost and voter turnout weigh in favor of consolidating a special election to fill a Council vacancy with a regularly scheduled statewide election. However, current Charter provisions require a prompt, standalone special election to fill most vacancies, which is the most likely scenario given that regular City elections are now only held in even-years.

6. Cost Savings And Fiscal Impact

The Committee's proposed Charter amendment aims to minimize the costs and balance the public interest in holding elections. The Committee's proposal will reduce the likelihood of the City holding standalone special elections, which the Committee believes will result in cost savings the City.

Reducing the likelihood of holding standalone special elections will likely result in cost savings for the City. Excluding internal administrative costs, a standalone special election currently costs approximately \$800,000 to \$1,300,000.³ In comparison, a regular general municipal election currently costs approximately \$300,000 to \$400,000, with the additional cost per seat included on the ballot ranging from \$33,040 to \$53,383 based upon the most recent general municipal election.⁴ The cost for a standalone special election is higher than a general election because the City is responsible for the full cost of the special election when the City must hold a special election on a date when no other City or regional election is scheduled.

7. Committee Considerations and Process

This Committee had many lively and thoughtful discussions about the advantages and disadvantages of appointments, special elections, and hybrid combination of both (for example, Government Code 36512 (b) and (c)). At the request of Committee members, City staff provided general information on how vacancies are handled in nearby cities and under the California General Law provisions. Additionally, the Committee reviewed City staff-provided data on the City's past elections, such as voter turnout, costs, and special election results.

Considering the information provided and the Committee's discussion, the Committee voted early in its deliberations to seek a "hybrid" solution to filling Council vacancies that allows for both an appointment process by the Council and elections by the people. The Committee's intention was to empower the Council to fill a vacancy in the way that best addresses the circumstances of a particular vacancy. The Committee expressed an interest in the hybrid model that included careful consideration of the appropriate balance between the financial burden of a special election and ensuring that voters elect City representatives.

³ Election cost estimates are calculated and provided by the Santa Clara County Registrar of Voters prior to each election. These figures represent current estimates, and may change for future elections.

⁴ The most recent example highlighting the potential cost savings is from the 2016 August and November elections. The 2016 standalone special election cost the City \$767,590, plus the cost per candidate statement of \$2,337, to fill one Council seat while the subsequent November general election cost the City \$452,158 to fill four Council seats.

The Committee actively debated the appointment component of the hybrid solution. Since Section 604 of the current Charter was designed to address issues with an unpopular appointment practice in 1975, it was necessary to discuss how to prevent a similar situation from arising again. Included in determining how best to incorporate an appointment process, the Committee discussed (i) a transparent prescribed process of selecting appointees, (ii) a fallback position if the Council fails to make an appointment, (iii) limitations on number of appointees serving concurrently, (iv) the term of an appointment, and (v) the timeframe for the Council to make an appointment. Additionally, the Committee reviewed city charters of nearby cities that include the appointment and/or special election processes, like Mountain View and San Jose, along with a brief national study of various cities. Finally, the Committee considered how best to ensure that the Council would have vacant seats filled in a short amount of time to better serve constituents and avoid even-split votes on the Council.

The Committee found one of the most important aspects of the hybrid approach was to include the most democratic option of holding an election to fill a vacant seat. Ideally, a special election would be held in conjunction with another regularly scheduled election, as it is both less expensive and more likely to have a higher turnout than a stand-alone special election. It was clear to Committee members that providing the Council with an option to either appoint or to call a special election was in the best financial interests of the City and upheld democratic principles to protect the interests of the City's citizens.

8. The Committee's Charter Recommendation: A Section-by-Section Explanation

The Committee had many lively and thoughtful discussions about the various options and precise language of the proposal. After extensive debate, the Committee voted 10-0-1 (Dietrich absent) for changing Section 604 of the Charter as recommended in Attachment 1 (Proposed Amendment to Section 604 (Filling of Vacancies in Council Seats)). The rationale of the Committee for each section of the proposed Section 604 is set forth below.

Committee Recommended Language	Explanation
<p>(a) In addition to any other cause from which vacancies in the City Council may occur, the office of a member of the Council shall become vacant when a member:</p> <ul style="list-style-type: none"> (1) Resigns or dies; (2) Is absent from all regular meetings of the Council for a period of sixty days consecutively from and after the last regular Council meeting attended by such member, unless by permission of the Council expressed in its official minutes; (3) Is convicted of a crime involving moral turpitude; (4) Ceases to be an elector of the City of Sunnyvale; (5) Ceases to maintain his/her principal place of residence within the City limits during such member's term of office; or (6) Is involuntarily removed pursuant to Article II of the Constitution of the State of California, as may be amended from time to time. 	<p>The Committee unanimously voted in favor of eliminating the current distinction between voluntary and involuntary vacancies thereby treating all vacancies the same regardless of the reason for the vacancies. The standard causes for a vacancy are listed in the proposed language. Section 4 of Article II of the California Constitution provides for the disqualification of voters for mental incompetency and imprisonment or parole for conviction of a felony. Since the Charter requires a Council member to be a voter, those same circumstances are grounds for removing a Council member from office.</p>
<p>(b) In the event of a vacancy on the City Council, the Council shall officially declare the seat vacant within thirty days of the commencement of any vacancy.</p>	<p>This provision mirrors the existing Charter. The proposed Charter includes time limits for filling a vacant seat, which are counted from the date the vacancy is declared. Giving the Council 30 days ensures that the Council can take this action at an existing Council meeting and provides additional flexibility in the Council's choices on filling the vacancy.</p>

Committee Recommended Language	Explanation
<p>(c) Within sixty days of the date the seat is officially declared vacant, the City Council shall, by affirmative vote of at least four of the remaining Councilmembers, elect to fill the vacancy by appointment or by calling an election.</p>	<p>Under the existing Charter, the Council has 60 days to fill by appointment an <u>involuntary</u> vacancy with a short unexpired term. Other city charters examined by the Committee include 30- or 60-day timeframes for the Council to make an appointment.</p> <p>The Committee chose to give the Council up to 60 days to make an appointment or call an election. At any time during that 60-day “decision window”, the Council may choose to call an election to fill the vacancy. For example, the Council may start an appointment process, abort that process prior to the end of the 60 days, and instead call an election.</p> <p>If the Council cannot achieve a decision within 60 days, this provision mandates that an election be called to fill the vacancy. See provision (f) in this section for the allowed timing for such an election.</p> <p>The requirement of at least four affirmative votes for an appointment matches the threshold for the Council to pass an ordinance.</p>
<p>(d) If the vacancy is filled by appointment, the appointee shall hold office until the next General Municipal Election or Special Municipal Election consolidated with the next statewide election, whichever occurs sooner, and a successor is elected and qualified. The Councilmember then elected shall serve for the remainder of any unexpired term, and until a successor is elected and qualified.</p>	<p>Appointees only serve for a limited period. The Committee decided it was important for the Council to operate with a full slate of members by making an interim appointment to fill a vacancy. However, the Committee also aimed to ensure that the citizens of the City elect their Council members. Therefore, an appointee will fill a vacancy until the City can elect the Council member at the next statewide election (including primary and general elections).</p> <p>Each appointee will serve until the meeting at which the successor takes the oath office (i.e., when the successor is elected and qualified).</p>
<p>(e) The City Council shall adopt an ordinance establishing a public process for appointment.</p>	<p>The Committee recommends that the Council adopt an ordinance that addresses the process for filling Council vacancies by appointment. The Committee favors an <u>ordinance</u> over a <u>policy</u> because an ordinance cannot easily be changed, which the Committee believes will decrease opportunities for manipulation of the appointment process.</p>

Committee Recommended Language	Explanation
<p>(f) If the City Council elects to fill the vacancy by election or fails to fill the vacancy by appointment, it shall call an election to be held within two hundred and forty days of the date the vacancy is declared.</p>	<p>This section lays out the procedure in the event that the appointment process fails, or the Council decides to forgo the appointment process and hold a special election. This section provides an incentive for the Council to reach a consensus on an appointment, while also providing a default if the Council fails to make an appointment.</p> <p>The original language of the Charter stated that a special election would be held within 120 days of the date when the vacancy was officially declared by the Council. Such an election could then be consolidated with any election already scheduled within 180 days.</p> <p>The Committee recommends allowing an election to occur up to 240 days after the Council declares a vacancy. The Committee calculated the 240-day maximum timeframe based upon these three periods:</p> <ul style="list-style-type: none"> • 60 days for Council to decide whether to appoint or elect; • 120-day minimum period to hold an election, since California law requires elections to be on Tuesday and specifies a nomination filing period for candidates to begin 113 days prior to an election; and • 60 days to provide flexibility for scheduling an election or consolidating with an existing election. <p>This provision implies that the Council may hold a seat vacant if there is an upcoming statewide or general municipal election within 240 days from the date the Council declares a vacancy.</p>

Committee Recommended Language	Explanation
<p>(g) Notwithstanding any other provision of this section, the City Council shall not make an appointment to fill a vacancy if the appointment would result in more than two of the members currently serving on the Council as appointees, and shall call a Special Municipal Election to be held within one hundred and eighty days from the date the Council declares the vacancy.</p>	<p>While the Committee agreed that capping the number of appointees on the Council at any given time was important, the Committee actively debated whether the cap should be placed at one or two appointees. The Committee ultimately voted to cap the number of appointees on the Council at two, which is intended to provide the City flexibility while also ensuring a super majority of Council members are elected. In the unlikely event that a vacancy occurs while two appointees are serving on the Council, the Council must hold an election within 180 days to fill the vacant seat.</p> <p>Interim appointees required under federal law count toward the cap on appointed members. Under federal law, if a Council member is called to active military duty, as was the case in 2009, the Council must make an interim appointment to fill the seat for the duration of the Council member’s military duty. Under the proposed Charter, if a Council member vacates a seat while two members of the Council were serving military duty, then the Council would fill the third seat by special election. However, if a member of the Council is called to active duty while two appointees are serving on the Council, then federal law would supersede the Charter. The Council would then be required to make an interim appointment and three appointees would serve on the Council.</p> <p>This section provides 180 days versus 240 days because there is no appointment process.</p> <p>Lastly, if an appointed member is ultimately elected to the Council, such member is no longer an appointee.</p>

9. Open and Transparent Appointment Process Ordinance

The Committee believes it is important to the City’s electorate for the City to have an open and transparent appointment ordinance. An ordinance specifying an open and transparent process will help decrease the possibility for manipulation of the appointment process, because the ordinance cannot be easily changed once a vacancy occurs.

Several other Bay Area cities allow an appointment to fill vacancies and include an appointment process that emphasizes openness and transparency. The Committee

encourages the Council to refer to the Committee meeting attachments in the Staff Report to the Committee on February 8, 2018 for such examples.

The Committee recommends an open and transparent appointment process that includes the following characteristics:

- posting and notification to public of vacancy and application process in accordance with best practices,
- specified application period,
- pre-determined application,
- public interview process,
- solicitation of public comments, and
- open deliberation and voting.

10. Flow Chart and Examples

The Committee's proposed process for filling a council vacancy is illustrated by the flowchart in Attachment 4 and may be summarized as follows:

- If the Council already has two or more appointed members, a special election must be called to fill the vacancy.
- Otherwise, the Council decides whether to fill the vacancy by appointment or by special election.
- If appointment is chosen, at least four councilmembers must agree on an appointee within 60 days, or else a special election must be called.
- If an appointment is made, the appointee serves only until the next statewide election. The person then elected serves the remaining unexpired term.⁵

Three example vacancies were chosen to illustrate the application of the Committee's proposed system for filling vacancies. These examples highlight the flexibility of the proposed process, the Committee's preference for short appointed terms, and a consequence of that preference. A graphic illustration of each example is given in Attachment 5, along with additional information.

Example 1 – High Cost Election for a Short Term

Apr 19, 2022: vacancy declared for Seat 1, unexpired term: about 9 months

Nov 8, 2022: general election for next four-year term in Seats 1-2-3

This is the situation the City faced in 2016. The vacancy occurs too late to consolidate a special election to fill the vacancy with the statewide primary. The general election is nearly 7 months after the vacancy is declared.

⁵ See Example 1 in this section for the one exception to an appointment being followed by an election to fill out the remaining unexpired term.

Current law would mandate an \$800,000⁶ standalone special election in August to fill the vacated seat for about 4 months, resulting in two elections for the same Council seat within 3 months.

Under the Committee's proposal, a councilmember could be appointed to serve until January, when the next person elected to four years in Seat 1 takes office. Alternatively, a special election could be held during a four-month window from mid-August to mid-December. Since the general election falls in that window, the seat may be left vacant until January. The Council might choose to leave the seat vacant, for example, if the Council wanted to avoid any appearance of influencing the outcome of the general election via the appointment process.

The Committee's proposal offers two options for filling the vacancy without a special election. If this system had been in place in 2016, the City could have avoided holding two closely spaced elections for the same seat and saved nearly \$800,000.

Example 2 – Vacancy with a Long Unexpired Term

May 28, 2019: vacancy declared for Seat 2, unexpired term: about 3.5 years

Mar 3, 2020: next statewide election (primary)

Nov 8, 2022: general election for next four-year term in Seats 1-2-3

This example highlights the Committee's preference for shorter appointed terms. It also demonstrates the flexibility of the Committee's proposal, which provides a wider range of dates for a special election and a lower-cost appointment option.

Current law would mandate a standalone special election on September 24, 2019, which would cost about \$800,000.⁷ Seat 2 will end up being vacant for about five months, and the elected councilmember will serve over 3 years.

Under the Committee's proposal, a special election could occur within a window of four months: from the September date mandated by current law to a date in January 2020. Since there is no statewide election in that window, it would still be a standalone special election. The elected Council member would serve about 3 years.

Alternatively, under the Committee's proposal, the Council could fill the vacancy by appointment. An appointee would serve about 9 months until the March primary, and then an elected Council member would fill out the remaining term of about 32 months. That election would cost about \$125,000.⁸ This option is less costly for the City and fills the vacant seat at least 3 months sooner than a special election. It also puts an elected councilmember in the seat for nearly as long as a special election.

⁶ The estimated election costs used in this section were calculated using the latest 2017 cost factors from the Registrar of Voters and the number of registered voters in Sunnyvale on 4/11/2018. The estimates assume two candidates per election. This yields a range of \$700,000 to \$1.3 million for a standalone election for one seat, \$125,000 to put one seat on a primary ballot, and \$45,000 to add another seat to a general election.

⁷ See Footnote 6.

⁸ See Footnote 6.

Example 3 – Two Elections in Year 4

Nov 2, 2021: vacancy declared for Seat 3, unexpired term: about 14 months

Mar 8, 2022: statewide primary election

Nov 8, 2022: general election for next four-year term in Seats 1-2-3

This example highlights a consequence of the Committee’s preference for replacing appointees with elected Council members as quickly as possible. In this instance, the proposed process offers no alternative to holding two elections in the same year.

This vacancy occurs soon before the opening of the candidate filing period for the March primary, and the primary is about 4 months after the vacancy is declared. (See the visualization of this example in [Attachment 5](#).)

Current law allows the special election to be consolidated with the March primary. That consolidated election would cost about \$125,000, much less than a standalone special election. The seat would be vacant about 6 months and then filled for 8 months. Two elections would occur within 8 months in year 4.

Under the Committee’s proposal, the special election option yields the same solution as current law: an election consolidated with the primary, 8 months before the regular general election for Seat 3. If an appointment were made instead, the subsequent election would also occur in March, and therefore there would still be two elections in the same year. Appointment still has the advantage of filling the vacancy about 4 months sooner, but it also has a potential drawback in this instance: the appointment process would occur at the same time as the campaign for the primary.

Under the Committee’s proposal, there is no way around having an election at both the primary and general elections. If the primary were held in June instead of March,⁹ those two elections would occur within 5 months. This situation is similar to the one that motivated the Council to seek to change the current Charter, except that the extra election mandated by the proposed system in this example is consolidated and therefore much less costly than the one that was mandated in 2016 by the current Charter.

11. Conclusion

The Committee had many thoughtful and detailed discussions about filling Council vacancies. There were times when the Committee agreed and times when the Committee disagreed. Through the process, the Committee managed to work out a recommendation that balances financial considerations with democratic principals.

The Committee tried to minimize the time a seat would be vacant or occupied by an appointee; to restrict the number of appointees allowed on council; and to minimize election costs while acknowledging that elections do incur a necessary additional cost. The Committee considered various scenarios and what each scenario

⁹ The primary election is being held in June in 2018, but will change to March starting in 2020. Since the Legislature has changed the primary date repeatedly, it could move back to June in the future.

would cost in shaping our recommendation. The Committee also tried to narrow the possible window of time that would force an expensive special election instead of a consolidated election. The Committee believes it addressed each of the Council's primary concerns when the Council decided to convene this Charter Review Committee.

In addition to the changes the Committee is proposing to Charter Section 604, the Committee strongly recommends that if the Council places this item on the November ballot and it passes, the Council should develop a process for appointing Council members shortly thereafter. The Committee believes such a process should be transparent, include applications, and ample opportunity for public input. The Committee believes it is important to have such a process in place prior to making an appointment.

In conclusion, the Committee, by a vote of 10-0 (Dietrich absent), recommends that the Council adopt the proposed amendments to Charter Section 604 as attached in Attachment 1.

Respectfully submitted,

**2018 CHARTER REVIEW
COMMITTEE**

The signatures below are from all members of the Charter Review Committee participating in the Committee's work. The individual Committee members signing do not necessarily endorse or agree with all of the recommendations and reasons in the report.

Lawrence Stone, Chair

Carol Weiss, Vice

Linda Davis

Hannalore Dietrich

Melinda Hamilton

Dawn Hopkins

John Howe

Marc Ketzell

Richard Mehlinger

Amanda Richey

Jack Walker

Attachments:

1. Proposed Amendment to Charter Section 604
2. Current Charter Section 604
3. Consolidated Elections Under Current Charter Section 604
4. Flowchart of Proposed Charter Section 604
5. Vacancy Examples
6. 2018 CRC Meeting Minutes

**Charter Section 604 Amendment
Charter Review Commission Recommendation**

(a) In addition to any other cause from which vacancies in the City Council may occur, the office of a member of the Council shall become vacant when a member:

- (1) Resigns or dies;
- (2) Is absent from all regular meetings of the Council for a period of sixty days consecutively from and after the last regular Council meeting attended by such member, unless by permission of the Council expressed in its official minutes;
- (3) Is convicted of a crime involving moral turpitude;
- (4) Ceases to be an elector of the City of Sunnyvale;
- (5) Ceases to maintain his/her principal place of residence within the City limits during such member's term of office; or
- (6) Is involuntarily removed pursuant to Article II of the Constitution of the State of California, as may be amended from time to time.

(b) In the event of a vacancy on the City Council, the Council shall officially declare the seat vacant within thirty days of the commencement of any vacancy.

(c) Within sixty days of the date the seat is officially declared vacant, the City Council shall, by affirmative vote of at least four of the remaining Councilmembers, elect to fill the vacancy by appointment or by calling an election.

(d) If the vacancy is filled by appointment, the appointee shall hold office until the next General Municipal Election or Special Municipal Election consolidated with the next statewide election, whichever occurs sooner, and a successor is elected and qualified. The Councilmember then elected shall serve for the remainder of any unexpired term, and until a successor is elected and qualified.

(e) The City Council shall adopt an ordinance establishing a public process for appointment.

(f) If the City Council elects to fill the vacancy by election or fails to fill the vacancy by appointment, it shall call an election to be held within two hundred and forty days of the date the vacancy is declared.

(g) Notwithstanding any other provision of this section, the City Council shall not make an appointment to fill a vacancy if the appointment would result in more than two of the members currently serving on the Council as appointees, and shall call a Special Municipal Election to be held within one hundred and eighty days from the date the Council declares the vacancy.

ATTACHMENT 2

Current Section 604 (Filling of Vacancies in Council Seats)

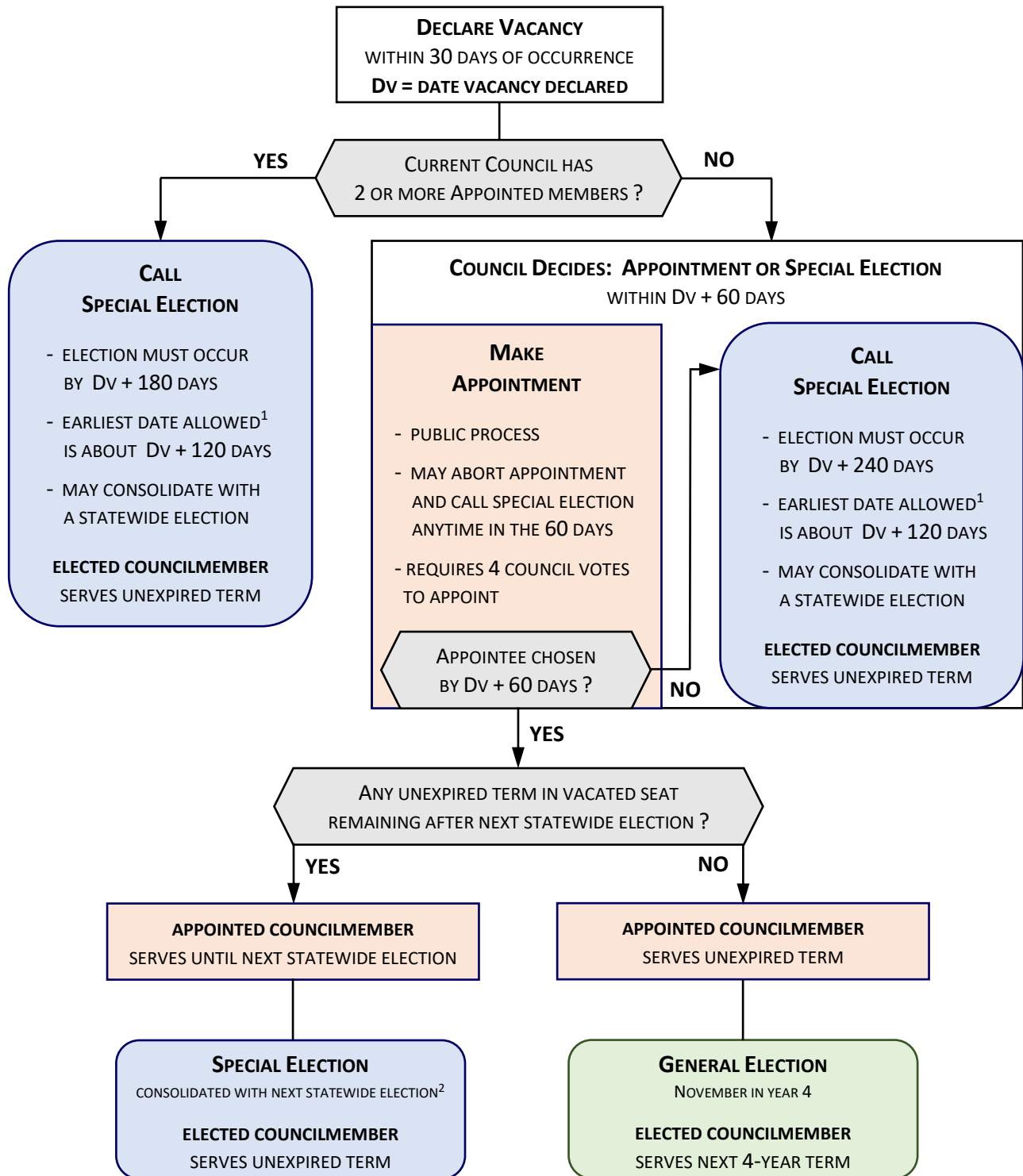
Except as otherwise provided herein, in the event of a vacancy in the City Council, from whatever cause arising, within thirty days of the commencement of any vacancy the City Council shall officially declare the seat vacant and call a Special Municipal Election for the purpose of filling such vacancy. In the event of a vacancy in the City Council created by the death or other involuntary removal of a member, pursuant to Article II, Section 4, of the Constitution of the State of California, where the unexpired term of the deceased or removed member does not exceed one hundred eighty days, the City Council shall, within sixty days after such office shall have been declared vacant, fill such vacancy by appointment. Should the Council fail to fill the vacancy within the sixty-day period, it shall treat such vacancy in the same manner as one created by a cause other than death or involuntary removal.

Any Special Municipal Election called to fill an unexpired term shall be held within one hundred and twenty days from the date the Council declares the vacancy to exist except that no election shall be held on the day before, day of, or day after a state holiday. The Council shall promptly declare or take the required steps to declare the existence of the vacancy. Such special election shall be consolidated with a general municipal or statewide election if a municipal or statewide election is scheduled within one hundred and eighty days from the date that the vacancy is declared. As used herein, the next general municipal or statewide election means the next such election at which it is legally possible to place the matter on the ballot and elect a successor. Any person elected or appointed to fill a vacancy shall serve for the remainder of the unexpired term and until his/her successor is elected and qualified.

In addition to any other cause from which vacancies in the City Council may occur, the office of a member of the City Council shall become vacant and it shall be so declared by the Council where such member is absent from all regular meetings of the Council for a period of sixty days consecutively from and after that last regular Council meeting attended by such member, unless by permission of the Council expressed in its official minutes; or such member is convicted of a crime involving moral turpitude; or he/she ceases to be an elector of the City of Sunnyvale or ceases to maintain his/her principal place of residence within the City limits during his/her term of office. (Amended effective December 31, 1975, December 21, 1976, December 23, 1982 and January 17, 1992: previously Section 703).

FILLING A CITY COUNCIL VACANCY

PROCESS PROPOSED BY THE 2018 CHARTER REVIEW COMMITTEE



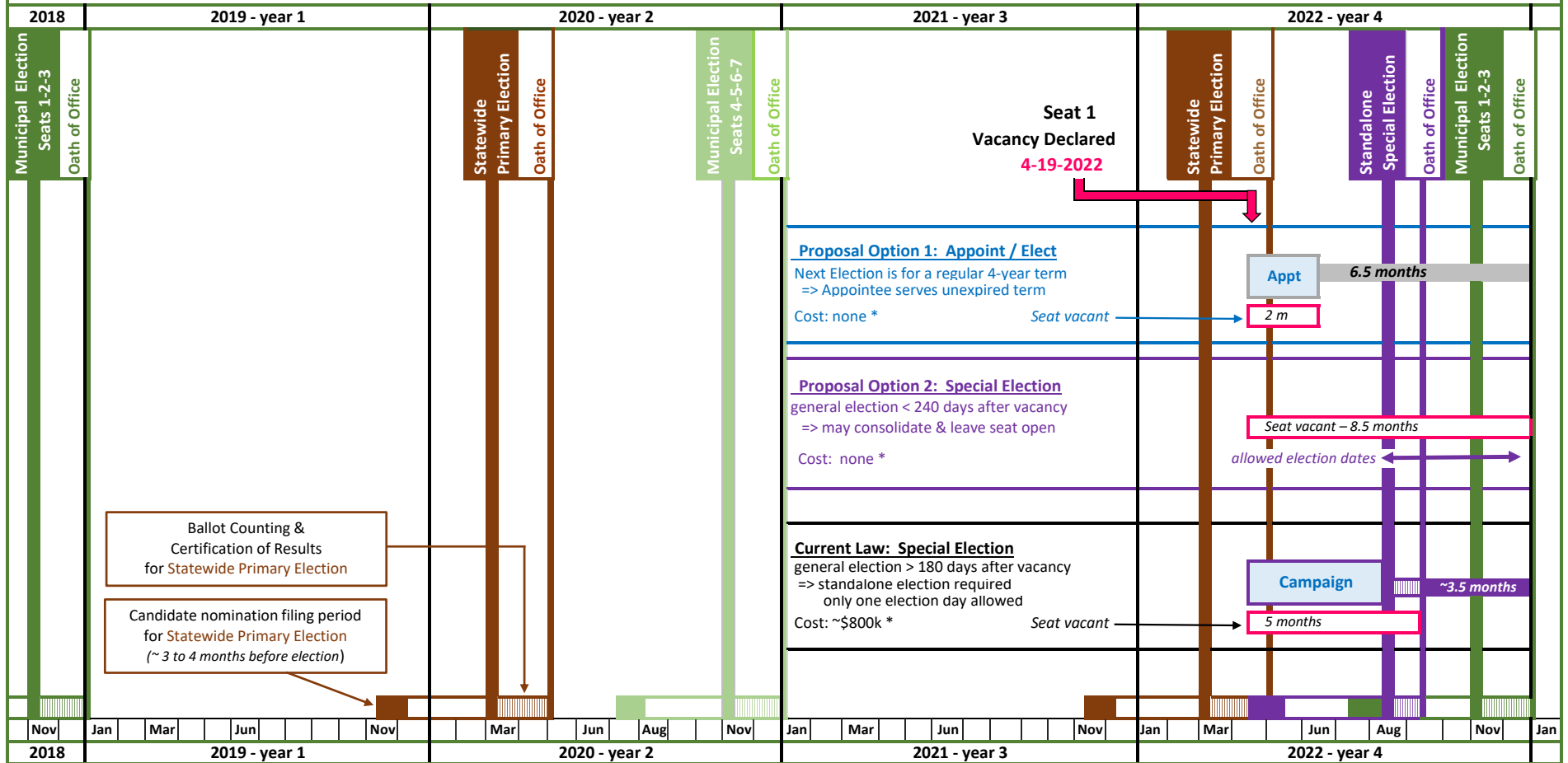
¹ State law mandates a candidate nomination filing period from 113 to 88 days before an election. The election must be on a Tuesday and cannot be within one day of a state holiday.

² This may be the General Election in year 2 (mid-term election), a primary, or other statewide election.

2019 - 2022: Four-year term for City Council Seats 1-2-3

Filling a Vacancy on the City Council – with the Process Proposed by the 2018 Charter Review Committee

Example 1: High Cost Election for a Short Term



This situation occurred in 2016. Current Section 604 of the City Charter mandated a standalone special election that cost ~\$800,000 to seat a Council member for about four months.

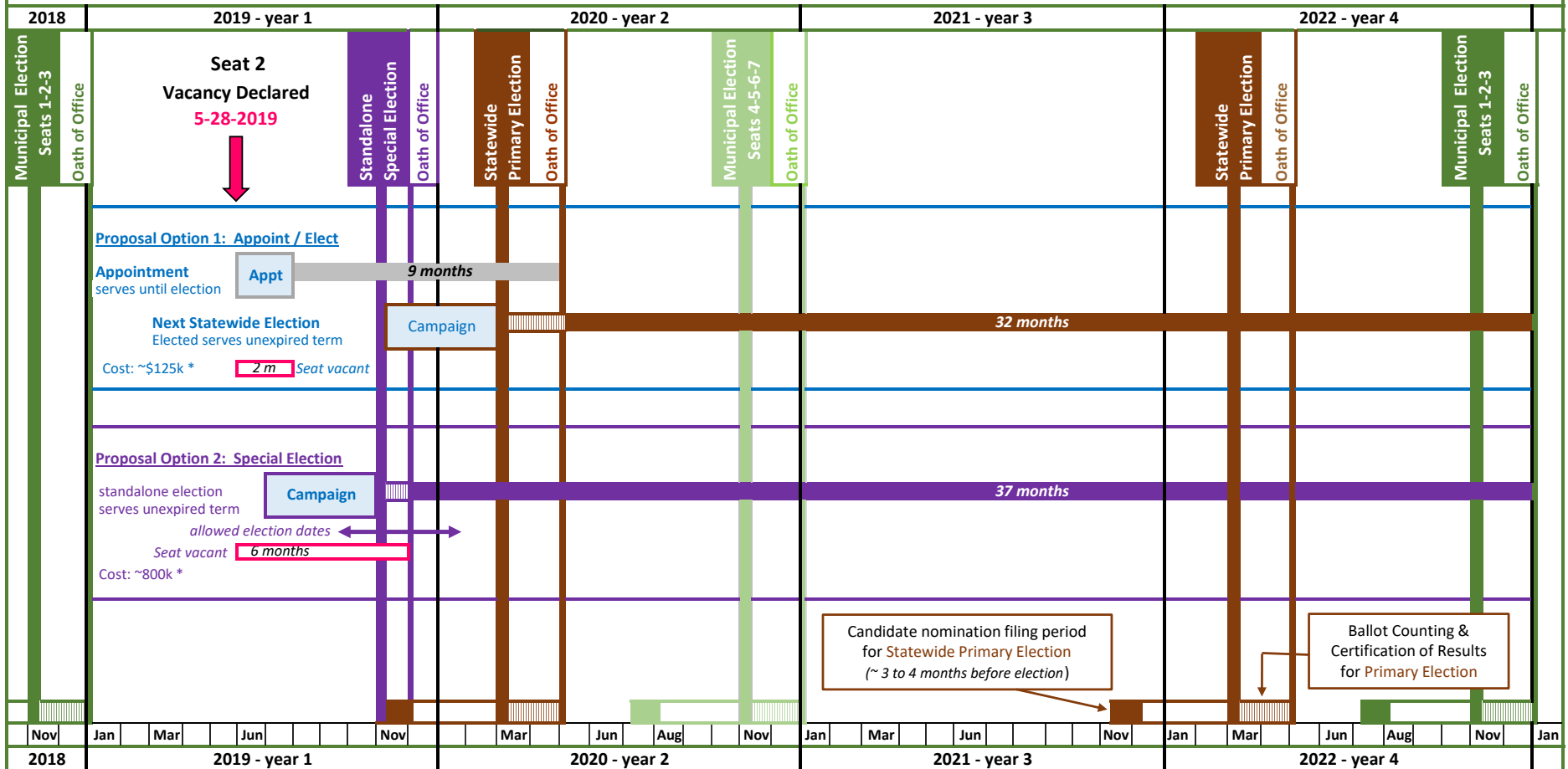
Charter Section 604 proposed by the 2018 Charter Review Committee allows the standalone special election, but also offers two other options for filling this vacancy:

- 1) The Council may appoint a Council member who would serve for about 6.5 months through the end of the unexpired term.
- 2) The Council may also choose to leave the seat vacant until the next Council member takes office for a regular four-year term.

* These costs are estimates of what the Registrar of Voters charges the City to conduct different types of elections, based on 2017 cost factors and 57,632 Sunnyvale voters as of 4/11/2018. The City incurs other costs associated with elections and appointments that are not included in the estimates shown here.

2019 - 2022: Four-year term for City Council Seats 1-2-3

Filling a Vacancy on the City Council – with the Process Proposed by the 2018 Charter Review Committee
Example 2: Vacancy with a Long Unexpired Term

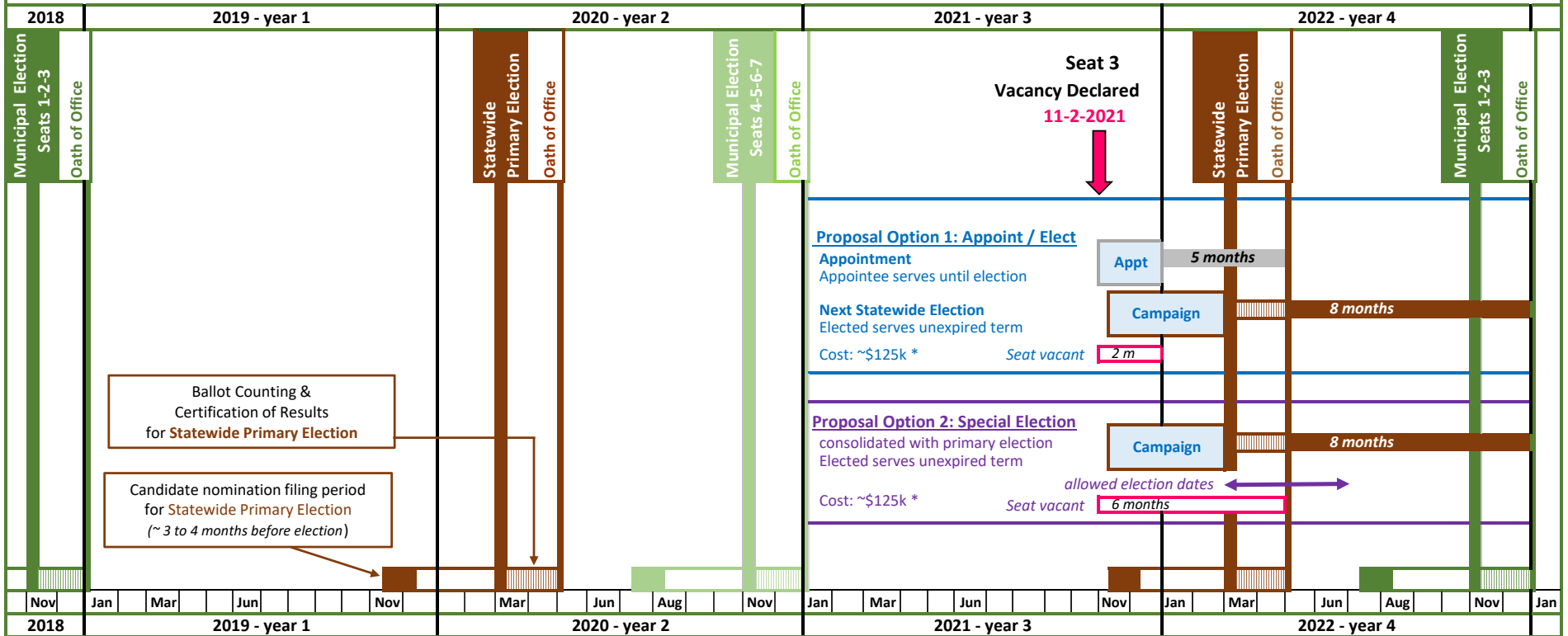


* These costs are estimates of what the Registrar of Voters charges the City to conduct different types of elections, based on 2017 cost factors and 57,632 Sunnyvale voters as of 4/11/2018. The City incurs other costs associated with elections and appointments that are not included in the estimates shown here.

2019 - 2022: Four-year term for City Council Seats 1-2-3

Filling a Vacancy on the City Council – with the Process Proposed by the 2018 Charter Review Committee

Example 3: Two Elections in Year 4



When does the appointment option produce "Two Elections in Year 4"?

When a vacancy is declared during this range of dates for Seat 1, Seat 2 or Seat 3, two elections will occur in 2022.

first day a Seat cannot be added to the municipal election
last day a Seat can be added to the primary election
Vacancy Declared for Seats 1-2-3
July 13, 2020 – November 14, 2021
about 16 months of a four-year term
~ 5.5 months in 2020 ~ 10.5 months in 2021

What is the likelihood that a vacancy in Seat 1, 2, or 3 over a four-year term results in two elections in a year?
~16 months / 48 months = **~33%**

Vacancy Declared for Seats 4-5-6-7
~ 10.5 months in 2019

Two elections in 2020 result from a vacancy in this date range declared in Seats 4-5-6-7.

Two elections in 2024 result from a vacancy declared in Seats 4-5-6-7 in this date range.

Seats 4-5-6-7
~ 5.5 months in 2022

What is the likelihood that a vacancy will lead to two elections in a year? 50% for a vacancy declared in 2019 • 20% in 2020 • 38% in 2021 • 26% in 2022 => **average of ~33%**

The numbers above are for March primary elections and assume the appointment option is used to fill the vacancy.

If primary elections occur in June instead of March, the chance that a vacancy will result in two elections in one year increases to ~19/48 = **~40%**.

* These costs are estimates of what the Registrar of Voters charges the City to conduct different types of elections, based on 2017 cost factors and 57,632 Sunnysvale voters as of 4/11/2018. The City incurs other costs associated with elections and appointments that are not included in the estimates shown here.



City of Sunnyvale

Meeting Minutes - Final Charter Review Committee

Thursday, January 11, 2018

6:00 PM

HR Training Room, 505 W. Olive Ave.,
Suite 202, Sunnyvale, CA 94086

Special Meeting

CALL TO ORDER

City Clerk Kathleen Franco Simmons called the meeting to order at 6:01 p.m.

ROLL CALL

Present: 11 - Member Linda Davis, Member Hannalore Dietrich, Member Melinda Hamilton, Member Dawn Hopkins, Member John Howe, Member Marc Ketzel, Member Richard Mehlinger, Member Amanda Richey, Member Lawrence Stone, Member Jack Walker, Member Carol Weiss

OATH OF OFFICE

City Clerk Kathleen Franco Simmons administered the Oath of Office to all members.

INTRODUCTIONS

Mayor Hendricks provided welcoming remarks and Committee Members introduced themselves.

PRESENTATION

[18-0046](#) Brown Act, Parliamentary Procedure and Public Records Act

Assistant City Attorney Melissa Tronquet provided a presentation on the Brown Act, Parliamentary Procedure and Public Records Act.

GENERAL BUSINESS

1 [18-0047](#) Selection of Chair and Vice Chair

Assistant City Manager Teri Silva opened nominations for the office of Chair of the

Charter Review Committee.

Committee Member John Howe nominated Committee Member Larry Stone for Chair.

Committee Member Richard Mehlinger nominated Committee Member Carol Weiss for Chair.

Committee Member Hannalore Dietrich nominated Committee Member Melinda Hamilton for Chair.

There being no further nominations, nominations were closed.

Committee Member Stone accepted the nomination.

Committee Member Weiss accepted the nomination.

Committee Member Hamilton declined the nomination.

Committee Member Stone responded to questions and provided a statement of his background.

Committee Member Weiss provided a statement of her background.

Public comment was opened at 6:45 p.m.

Steve Scandalis inquired as to the legality of selection of an elected official serving as Chair and expressed comments regarding Committee Member Stone's statement of his background.

SHOW OF HANDS VOTE in favor of Committee Member Lawrence Stone for Chair:
9 - (Committee Members Linda Davis, Hannalore Dietrich, Melinda Hamilton, Dawn Hopkins, John Howe, Marc Ketzler, Amanda Richey, Lawrence Stone, Jack Walker)

Committee Member Stone was selected to serve as Chair.

Chair Stone presided over the remainder of the meeting.

Committee Member John Howe nominated Committee Member Carol Weiss for Vice Chair.

Committee Member Amanda Richey nominated Committee Member Richard Mehlinger for Vice Chair.

Committee Member Mehlinger declined the nomination.

Public comment was opened at 6:48 p.m.

No speakers.

Public comment was closed at 6:48 p.m.

SHOW OF HANDS VOTE in favor of Committee Member Carol Weiss for Vice

Chair: Unanimous

- 2** [18-0054](#) Adopt "The Standard Code of Parliamentary Procedure - 4th Edition" by Alice Sturgis as the Charter Review Committee's Rules of Procedure

City Attorney John Nagel provided a staff report and recommended that the committee may want to define a majority as a majority of those present if a quorum is established, or operate under the general rule of it being a majority of the bodies present on every item with the exception of the final recommendation to Council which would be by a majority of the Committee.

Public comment was opened at 6:51 p.m.

No speakers.

Public comment was closed at 6:51 p.m.

MOTION: Committee Member Howe moved and Vice Chair Weiss seconded the motion to Adopt "The Standard Code of Parliamentary Procedure 4th Edition" by Alice Sturgis as the Charter Review Committee's Rules of Procedure, with the modification that the City Attorney provided.

The motion carried unanimously.

- 3** [18-0048](#) Discussion and possible action to approve Meeting Schedule

Assistant City Manager Teri Silva provided a staff report.

Public comment was opened at 7 p.m.

No speakers.

Public comment was closed at 7 p.m.

MOTION: Committee Member Hamilton moved and Committee Member Davis seconded the motion to approve the schedule as proposed by staff:

Second (2nd) and Fourth (4th) Thursdays at 6 PM:

January 25

February 8

February 22
March 8
March 22
April 12
April 26
May 10

The motion carried unanimously.

4 [18-0049](#) Review Charter Review Committee Scope and Discuss Work Plan

Assistant City Manager Teri Silva provided a staff report. City Attorney John Nagel and Assistant City Attorney Melissa Tronquet provided additional information.

Public Hearing opened at 7:19 p.m.

Steve Scandalis expressed comments regarding the question of whether the recent election was an outlier based on the switch from odd to even-year elections.

Public Hearing closed at 7:36 p.m.

MOTION: Committee Member Howe moved and Committee Member Walker seconded the motion to accept the staff report and provide a general consensus of items for consideration. Committee discussion included:

- Voting numbers for elections for the last decade;
- Information about limited term appointments;
- General Law provision for vacancies;
- How other city charters handle vacancies;
- Information about how to handle multiple vacancies caused by a disaster that leaves the Council without a quorum;
- How vacancies have been filled since 1976 when this section was first passed;
- The history of the people who filled those vacancies, whether it was filled through appointment, or through a special election, how those people continued to be involved with the City Council;
- How many of those people went on to eventually run for that same seat;
- How many times have we had to have special elections versus how many times we've had them rolled into a regular election;
- What percentage of people continue to vote for local issues down the ballot;

AMENDMENT: Committee Member Howe stated the motion is amended to include the additional requests for information provided by Committee members. The maker of the second accepted the amended motion.

The motion carried unanimously.

ADJOURNMENT

Chair Stone adjourned the meeting at 7:55 p.m.



City of Sunnyvale

Meeting Minutes - Final Charter Review Committee

Thursday, January 25, 2018

6:00 PM

HR Training Room, 505 W. Olive Avenue,
Suite 202, Sunnyvale, CA 94086

CALL TO ORDER

Vice Chair Carol Weiss called the meeting to order at 6:02 p.m.

ROLL CALL

Present: 10 - Member Linda Davis, Member Hannalore Dietrich, Member Melinda Hamilton, Member Dawn Hopkins, Member John Howe, Member Marc Ketzler, Member Richard Mehlinger, Member Amanda Richey, Member Jack Walker, Vice Chair Carol Weiss

Absent: 1 - Chair Lawrence Stone

Committee Member Mehlinger arrived at 6:55 p.m.

ORAL COMMUNICATIONS

Steve Scandalis spoke in reference to the letter submitted by Larry Stone, and encouraged the committee to understand the reasoning why voters put forward the initiative in 1975 and how the citizens benefit from having elected officials.

Scandalis spoke in support of minimizing appointed officials and stated his interest in finding out more about modifying the process slightly to reduce cost but to also hold true to the voter intent of the 1975 election.

CONSENT CALENDAR

- 1 [18-0018](#) Approve Charter Review Committee Meeting Minutes of January 11, 2018

MOTION: Committee Member Howe moved and Committee Member Hamilton seconded the motion to approve Charter Review Committee Meeting Minutes of January 11, 2018 as submitted.

The motion carried by the following vote:

Yes: 9 - Member Davis
Member Dietrich
Member Hamilton
Member Hopkins
Member Howe
Member Ketzel
Member Richey
Member Walker
Vice Chair Weiss

No: 0

Absent: 2 - Member Mehlinger
Chair Stone

GENERAL BUSINESS

- 2** [18-0093](#) Discussion of Common Alternatives to Filling Councilmember Vacancies and Next Steps for Charter Commission Review and Recommendation to Council Regarding Amendment of Charter Section 604

Assistant City Attorney Melissa Tronquet provided a staff report. Assistant City Manager Teri Silva and City Clerk Kathleen Franco Simmons provided additional information.

Committee discussion of next steps and additional questions or requests for information included:

- Consideration of breaking out into subcommittees to discuss each of the three or four options presented in the report;
- Consideration of subcommittees meeting during a portion of the scheduled meetings, or alternatively, to meet outside of the scheduled meetings;
- Clarification of options in terms of adopting an ordinance or amending the charter;
- Question of whether vote by mail ballots could be used;
- Question of whether costs of elections are increasing;
- Consideration of combining the four options into three: filling vacancies by election, by appointment, or by a hybrid method;
- Consideration of looking at other options “outside the box”, such as appointment of the candidate with the next highest votes;
- Request for information about district elections and how a change to that form would impact how vacancies might be filled;
- Comments regarding the difference in representation with district elections;

- Comments regarding numbered seats;
- Request for information regarding appointment options;
- Request for information regarding the rationale for why there are different methods of filling vacancies depending on whether the vacancy is voluntary or involuntary, and the possible opportunity to simplify;
- Request for information regarding the 1991 charter amendment for filling vacancies by appointment when the vacancy is created by involuntary removal;
- Discussion of why the voter turnout of 1988 was significantly higher than other years.

Public comment opened at 6:48 p.m.

Steve Scandalis expressed comments regarding topics of the next highest vote-getter, the form of election, district elections, at-large elections, the influence of council behavior in why there are two different ways of filling council vacancies, incumbent advantage, and seat-based council seats.

Public comment closed 6:51 p.m.

Committee discussion and consensus included:

- Consideration of subcommittees to divide up and meet in detail on one of the three or four options, or alternatively, each subcommittee to meet on the whole range of all options, then regroup to meet as a whole to present best solutions and strengths;
- Discussion of how long seats can remain vacant and whether consideration should be given to extending the length of time a seat can sit vacant;
- Recommendation to also consider the possibility of not changing the charter;
- Comments regarding the impacts to the citizens and applicants when having an even number of councilmembers results in split votes and no action; support for minimizing the length of time there is a vacancy;
- By consensus, the committee agreed to discuss all options as a committee of the whole, and possibly have subcommittees if necessary to study a specific topic and report back.

Public comment opened at 7:05 p.m.

No speakers.

Public comment closed at 7:05 p.m.

Committee discussion, questions, requests for consideration and comments included:

- Consideration of how variations in term limits may make a difference on the appointment or special election process; support for looking at how other cities handle this;
- Consideration of limiting the number of appointed members similar to General Law cities; support for limiting the number to two to prevent abuse of power while ensuring tax dollars are treated respectfully;
- Questions regarding the city's emergency operations plan succession scheme and time limitations;
- Consideration of a hybrid model of giving council discretion to choose whether to appoint or call a special election; consideration of parameters for this.

Committee comments regarding thoughts on the three options for filling vacancies included:

- Support for a hybrid method, extending the time after a vacancy occurs to give a buffer so it doesn't force a special election, giving council power to make an appointment or holding the election to fill the vacancy with a regular election;
- Support for the hybrid idea, but open to hearing more; not enough information yet;
- Support for a hybrid approach where the council could potentially appoint a maximum of one appointee; more than one would trigger a special election; advocate for not bifurcating how to handle a vacancy by involuntary removal, death, or resignation;
- Support for remaining open to considering a hybrid solution and coming up with the best solution;
- Support for the hybrid approach and the suggestion of limiting appointments to one or possibly two councilmembers; support for simplifying and treating all vacancies the same; comment that a special election with low turnouts is not a democratic solution;
- Suggestion for a framework whereby the committee members would think about the competing values, such as that of voting for ones representatives, and that of fiscal responsibility and efficiency; once the members figure out what they value, consider whether the process the committee will recommend will achieve a result that meets that value; support for a hybrid approach, with constraints being limiting the number of appointments on the council to one or two; suggestion to include a provision to give people the opportunity to submit a petition to contest an appointment and in favor of a special election;
- Support for a hybrid approach, being cautious about the possibility of instances where there might be a death of a councilmember; suggestion to have a transparent appointment process by either charter or ordinance; support for determining how much time to allow for an appointment to be made without a special election;

- Support for a clear appointment policy; support for allowing the council more flexibility in calling for special elections and extending the time so that it could be consolidated with a general election;
- Support for a defined and transparent process for appointment; comment that low voter turnout for special elections isn't a problem that can be solved and it is not a reason to not call a special election;
- Comment that mail ballot elections would enable more people to vote; comments about the change from odd to even year elections;
- Support for a hybrid model allowing for an appointment based on criteria, a transparent process and publication of it, and giving all registered voters a fair chance to apply; support for limiting appointments to one or two members of the council, to serve until the next general election;
- Request for information to staff, to find out if other cities have a policy in place about their appointment process;
- Questions and clarifications regarding an appointment to fill the seat until the next general election, a question of getting out of cadence with the charter-defined election of numbered seats, clarification of June or statewide elections, a question of the lead time to notify the county to call an election
- Suggestion to look at the City of Belmont's appointment process to fill a vacancy caused by the recent death of a councilmember; question of the days and dates elections can be held;
- Question of which seat an appointed councilmember could run for in the next election;
- Request for information on how an appointed incumbent can be listed on the ballot;
- Question of how the costs for a special election are paid;
- Consideration of providing more flexibility in the time that the city council can appoint, or change the timeline between declaring a vacancy and calling a special election;
- Consideration of extending the window of time to consolidate the election with a general election, or play with the number of days to allow consolidating with a general election to lower costs.

Public comment opened at 7:52 p.m.

Steve Scandalis stated democracy isn't free and encouraged the committee to keep costs lower down on the list of priorities. He stated that the savings from switching to even-year elections is far greater than an occasional special election and spoke in support of pursuing a hybrid method, a small timing change and limiting the

number of appointments. Scandalis suggested committee members avoid interjecting opinions about a councilmember who resigned.

Public comment closed at 7:55 p.m.

Final comments by committee members included:

- Request to provide information about the audio recording of this meeting to Chair Larry Stone;
- An offer to set up an app to model the timeline window based on different constraints;
- Interest in one or two members to meet outside of committee meetings.

ADJOURNMENT

Vice Chair Weiss adjourned the meeting at 7:57 p.m.



City of Sunnyvale

Meeting Minutes - Final Charter Review Committee

Thursday, February 8, 2018

6:00 PM

Human Resources Training Room, 505 W.
Olive Avenue, Suite 202, Sunnyvale, CA
94086

CALL TO ORDER

Chair Stone called the meeting to order at 6 p.m.

ROLL CALL

Present: 10 - Chair Lawrence Stone
Vice Chair Carol Weiss
Member Linda Davis
Member Hannalore Dietrich
Member Melinda Hamilton
Member Dawn Hopkins
Member John Howe
Member Marc Ketzel
Member Richard Mehlinger
Member Amanda Richey

Absent: 1 - Member Jack Walker

Committee Member Hamilton arrived at 6:05 p.m.

ORAL COMMUNICATIONS

Steve Scandalis spoke in appreciation for Larry Stone's letter of January 25 and in support of the decision of the committee at the last meeting to meet as a whole, rather than breaking into subcommittees.

CONSENT CALENDAR

1 [18-0127](#) Approve Charter Review Committee Meeting Minutes of
January 25, 2018

MOTION: Committee Member Howe moved and Committee Member Weiss seconded the motion to approve the Charter Review Committee Meeting Minutes of January 25, 2018 as submitted.

The motion carried by the following vote:

Yes: 10 - Chair Stone
Vice Chair Weiss
Member Davis
Member Dietrich
Member Hamilton
Member Hopkins
Member Howe
Member Ketzel
Member Mehlinger
Member Richey

No: 0

Absent: 1 - Member Walker

GENERAL BUSINESS

2 [18-0128](#) Discussion of Alternatives to Filling Councilmember Vacancies
and Possible Amendments to City Charter Section 604

Committee Members Carol Weiss and Dawn Hopkins provided a report of research they conducted among twenty different cities and states, some outside of California, on how they fill unexpected city council vacancies, and described some of the advantages and disadvantages of handling them by either appointment or special election. Committee Members Weiss and Hopkins' recommendations included:

- Support for an appointment process;
- Support for avoiding a stand-alone special election;
- Support for combining the special election with a General or Municipal Election, with the ballot clearly marked Special Election; the appointment should run through the next Statewide or General Municipal Election and certification of results, unless less than a year remains of the original term;
- The only situation allowing for a special election would be by citizens' petition based on a required percentage of registered voters as of a certain date;
- A short timeline is recommended for deciding on an appointee; no more than 60 days in most cases, from official declaration of vacancy to selection of appointee;
- The city clerk would publish in various venues and on various media, a notice of the vacancy and invite applications with general questions to be returned by a certain date;
- City Council would develop a more specific questionnaire to be filled out by the qualified applicants;

- In a public session, City Council would select three to seven qualified applicants;
- City Council would then develop questions to ask each of the applicants in a public forum;
- City Council would vote in public on an appointee.

Committee discussion, questions, comments or requests for information included:

- Discussion of some of the benefits of the appointment process, included: people who could not afford to run for election would be able to apply, leads to more diversity, the cost is less than a special election, appointment would be less onerous for a citizen, it would be faster to fill the vacancy and a partial council would be for less time;
- Support for having a special election when a council doesn't choose any applicants or when the council vote is split evenly;
- Discussion of the initial applicant questionnaire, as compared to the analysis voters make, and more specific questions the council might ask separately;
- Comments regarding some of the sample cities provided in the report, in which there is typically an option for a default to a special election if the council fails to make the appointment;
- Discussion of City of Belmont's recent all-mail ballot election with a cost of \$58,000;
- Suggestion to check to see if there have been changes to the law on all-mail ballot elections;
- Discussion of why it would make a difference if an appointee could not afford the cost of running in an election; comments that a council would want to consider whether an appointee couldn't later win an election due to the cost of running;
- Comments that the appointment process should be more accessible for everybody who has the ability and desire to serve; individuals can draw money from the community as a sign of support from the community;
- Request to have the candidates of the 2016 election testify to the committee about the impact the special election had on their campaigns and their lives;
- Comments that special elections are expensive because of the cost of communicating with the voters, support for publicly funded elections, and comments that the affordability quotient, when available to everybody, shouldn't be an issue in the decision of the type of structure for re-election;
- Comments that the appointment process may not foster diversity when a Council tends to appoint people like themselves;
- Discussion of having the candidates testify to the committee, to get a sense of the burden of the cost and time commitment of the special election process; suggestion to have the people on the committee who have run elections speak to the issues;

- Discussion of the cost savings of switching from odd-year to even-year elections;
- Discussion of the number of votes by Council to make the appointment;
- Comments regarding the cost of elections: the cost is lower for the City in even-numbered years, but the cost is higher for the candidates who are competing with many other offices and propositions to get their message out to the voters;
- Comments regarding the cost of democracy and the limits on campaign contributions;
- Comments regarding diversity of the voters as compared to the makeup of the City Council;
- Discussion of the issues of other cities changing to district elections;
- Comments regarding diversity and chaos when officeholders represent more than their districts;
- Comments in support of a representative democracy and disagreement with earlier comments regarding chaos when representation is diverse;
- Comments in support of the value of an appointment encouraging and fostering diversity; it would open doors and provide women and people of color opportunities for public speaking, meeting people, and finding mentors and sponsors;
- Comments regarding the availability of campaign contribution statements;
- Comments by committee members on their experiences of running for election, how a candidate runs, the time and energy they spend running, who they choose to run against, how mailed materials are targeted, campaign contribution limits, and communication through media and social media;
- Comments regarding the parameters for looking at some hybrid models.

Committee Member Mehlinger provided a presentation of a web application that shows a map of dates that would force a special election in contrast to dates an election could be consolidated with a Statewide election, based on the current 180-day window. Mehlinger concluded that the best solution would be a hybrid approach as discussed at the last meeting, with the option for Council to fill a seat by appointment or by special election at its discretion, and a 60-day window for making the appointment as an option to consider.

Committee discussion and comments included:

- Comments on having a time frame for calling a special election, determining whether it would be at the Council's discretion to leave the vacancy and possibly have a three-three split, or having some kind of force to trigger a special election;
- Discussion of whether to handle a vacancy different during odd-numbered years;
- Discussion of example cities as presented in the report as to how they chose the dividing line;

- Discussion of the 60-day window from the declaration of the vacancy to make an appointment or call a special election;
- Comments that from the viewpoint of the voter, there is also an extra burden of having a special election, and should be avoided;
- Comments in support of setting the time based on the amount of the unexpired term left for differentiating whether a special election should be held or the vacancy should be filled by appointment; the cost of a special election is much more justifiable if there is a two-year unexpired term left;
- Comments that City Council should be given an opportunity to be able to work with whatever they need to do before the clock starts ticking on a resignation;
- Comments that there would need to be rules that aren't manipulative based on the political composition of the people left on the Council;
- Support for an appointment process with a window during which the appointment must be made, and if no appointment is made, a special election is automatically triggered;
- Discussion of the appointment procedure; recommendation that it shouldn't be written into the charter;
- Comment that with the General Law cities the dividing line is two years, and 114 days before the election; if filled before that, the seat should go to the next General Election as a special election that gets consolidated with the next General Election; if filled after that, the seat is filled for the rest of the term;
- Comment that an election to fill a two-year term would be an added and unnecessary expense;
- Comment that an appointed person should serve for a shorter time and would have to stand for election at the next General Election to serve the remainder of the unexpired term;
- Comment that having five people [seats] running in a General Election would result in a lot of institutional knowledge potentially in turnover;
- Discussion regarding the importance of having a process or policy in place for making appointments;
- Information request to describe the difference between an ordinance and a policy;
- Suggestion that if the recommendation is that if less than half of the term remains, the appointment would stand for that period, rather than a special election; suggestion to decide what a reasonable time is, if less than two years remain, or if less than one year remains, the appointment will stand for the remainder of that term; that would do away with the really short periods of time;
- Comment that over 180 days or six months is a long time to be without a full council; if it is closer to a General Election, it should just be part of the General Election; if it is not close enough to the General Election, give the Council flexibility

to do what they want.

A point of personal privilege was raised to ask for a 5-minute recess.

Committee recessed at 7:30 p.m.

Committee reconvened at 7:38 p.m.

Committee discussion included:

- Comment to look at a 60-day timeframe to make an appointment, and the timeframe should be up to the next General Election;
- Comment that it would be up until a qualified person is elected and installed in the seat;
- Comment that this would be if the vacancy occurs before the filing period for the next General Election; after that, it would go to the following General Election two years out;
- Comment that if in the 60 days, an appointment is not made, then a special election is mandatory, or they can choose to call a special election if they choose not to appoint;
- Comment that the time frame would be 60 days from when the seat is declared vacant; the Council would have to declare the seat vacant within 30 days;
- Comment that it would be the next Statewide or General Election;
- Comment that if the Council decides to have a special election, it is back to the cost.

Public comment opened at 7:43 p.m.

Steve Scandalis expressed concerns regarding discussion of appointments going out to two-and-a-half years and commented on the difficulty of meeting 30-day deadlines for filing a citizen petition to challenge an appointee, the potential for manipulation of the application process, issues with mail-only special elections. Scandalis suggested all 2016 candidates should be asked to testify to the committee, and inquired as to how many votes of the Council would be required to appoint.

Public comment closed at 7:48 p.m.

MOTION: Committee Member Howe moved and Committee Member Hamilton seconded the motion that the committee agrees in general that up to 60 days after the seat is declared vacant, the City Council would be able to either appoint or call

for a General Election during that time frame; at the end of the 60 days, it would be mandatory to go to a special election; the appointment serves to the next General Election; and in general, the committee needs to come up with a maximum number of appointees before a special election is required, whether it is one or two, for discussion at the next meeting.

Committee discussion of the motion included:

- Clarification that if the 60 days falls within the filing period of the General Election, it would go to the General Election;
- Comments and clarification regarding consolidation with June elections, or the March election, depending on whether it is an even-numbered year or an odd-numbered year;
- Acknowledgement that the number of appointees is yet to be decided;
- Suggestion to give consideration of the length of the term and how much time is remaining in the term before it goes to a General Election;
- Agreement with the construct of resignation as day one, 30 days to declare the vacancy, and an additional 60 to 90 days to appoint or designate a special election; but disagreement that the construct should apply if there is a vacancy in the first half of a 4-year term; consideration should be given to prioritizing special elections if there is a vacancy within the first two years of a 4-year term;
- Comments that the motion was that if the vacancy occurred in the first half of a 4-year term, it would go to the next General Election for a split 2-year term; disagreement that this was included in the motion.

Chair Stone offered a clarification to the motion that an appointment would not go by a General Election. Committee Member Howe accepted the clarification of the motion.

Committee continued discussion of the motion included:

- Request for more time to consider the details and to meet in a sub-group to dig in to that framework and bring back clear choices and possible alterations;
- Suggestion to look at the section referring to appointment when a vacancy is caused by involuntary removal or by a death;
- Request for a summary of the construct and the parameters presented in the most logical order for a discussion outline;
- Concerns regarding a provision which might result in five Council seats up for election at one time;
- Question of when the clock starts ticking when a vacancy by various means occurs.

The motion failed by the following vote:

Yes: 5 - Chair Stone
Member Dietrich
Member Howe
Member Ketzler
Member Mehlinger

No: 5 - Vice Chair Weiss
Member Davis
Member Hamilton
Member Hopkins
Member Richey

Absent: 1 - Member Walker

Final comments by committee members included:

- Request for a discussion outline for the next meeting;
- Offer to meet in a subcommittee outside of the regular meeting;
- Request to those who voted no to come back with specific proposals for consideration;
- Suggestion for the next meeting, to have a white board to write the ideas;
- Offer to provide sample language;
- Request for copies of flow charts of the current process and the General Law Cities provision for filling vacancies

ADJOURNMENT

Chair Stone adjourned the meeting at 8:03 p.m.



City of Sunnyvale

Meeting Minutes - Final Charter Review Committee

Thursday, February 22, 2018

6:00 PM

Human Resources Training Room, 505 W.
Olive Avenue, Suite 202, Sunnyvale, CA
94086

CALL TO ORDER

Chair Stone called the meeting to order at 6 p.m.

ROLL CALL

Present: 10 - Chair Lawrence Stone
Vice Chair Carol Weiss
Member Linda Davis
Member Hannalore Dietrich
Member Dawn Hopkins
Member John Howe
Member Marc Ketzel
Member Richard Mehlinger
Member Amanda Richey
Member Jack Walker

Absent: 1 - Member Melinda Hamilton

ORAL COMMUNICATIONS

Steve Scandalis requested Committee Member Mehlinger to provide printed versions of the presentation of the range of days as a supplemental printout for the public record. Scandalis inquired as to whether the option of the Council to intentionally leave a vacancy has been explored and questioned whether it is allowed by a charter city.

CONSENT CALENDAR

1 [18-0188](#) Approve Charter Review Committee Meeting Minutes of February 8, 2018

MOTION: Committee Member Howe moved and Committee Member Hopkins seconded the motion to approve Charter Review Committee Meeting Minutes of February 8, 2018 as submitted.

The motion carried by the following vote:

Yes: 10 - Chair Stone
Vice Chair Weiss
Member Davis
Member Dietrich
Member Hopkins
Member Howe
Member Ketzel
Member Mehlinger
Member Richey
Member Walker

No: 0

Absent: 1 - Member Hamilton

GENERAL BUSINESS

- 2 [18-0189](#) Discussion of Alternatives to Filling Councilmember Vacancies and Amendments to City Charter Section 604, Including Adding an Appointment Provision, and Direction on Next Steps for Charter Review Committee Recommendation to City Council

Public comment opened at 6:06 p.m.

Zachary Kaufman suggested consideration of having a second body approve the appointment, such as presidents of neighborhood associations.

Public comment closed at 6:08 p.m.

Committee Member Richey provided a report regarding the “Small Working Group Draft Proposal 2-19-18” supplemental materials developed by Committee Members Linda Davis, Carol Weiss, Melinda Hamilton and Amanda Richey.

Discussion, comments and questions included:

- Discussion regarding some of the options when, for political reasons a split vote of the remaining Council would possibly result in the inability to select one of the options;
- Suggestion to consider making two years plus the filing period as the cutoff time to delineate between filling vacancy options;
- Discussion of the section defining a vacancy, sub-section e., when a Councilmember dies, and how to handle a situation involving competency or a

lengthy coma; inclusion of language covering any other cause;

- Discussion in favor of giving Council discretion to leave a seat vacant for a short period of time to avoid a situation of giving a short-term appointee incumbent advantage;
- Comments that incompetence is covered in Article II, Section F of the Constitution, which is included in sub-section f.;
- Discussion of putting a cap on the length of time a vacancy could be left open;
- Comments in support of keeping the section for filling vacancies simple rather than complicating it with the delineations between the first half and second half of terms;
- Discussion of the importance of avoiding having five seats running at one time, and keeping the cadence of the seats up for election; comments that the advantage of Option 1 would be a continuity of institutional knowledge and less likely to break up the specific elections, while Option 2 has the potential where there could be more seats up in an election, less institutional knowledge is maintained, but the advantage is saving money;
- Comments in support of adding to the section on Vacancy, a specific item for resignations;
- Discussion clarifying the cap on the number of appointees;
- Discussion in support of recommending to Council to create an open and transparent policy for making appointments before a vacancy occurs; and
- Discussion of the requirement to hold a special election within 120 days.

Chair Stone facilitated discussion of the key points in the report and informal straw votes to provide key direction or consensus on the following points:

- Should the timeframe for a seat to be declared vacant remain at 30 days? (9 in favor -1 dissenting vote by Committee Member Richey)
- Should the timeframe for appointing a new councilmember after the vacancy is declared be 60 days? (Unanimous in favor)
- If the Council is unable to appoint a member within the established period, should a special election be mandatory? (Failed on a 5 - 5 vote with Committee Members Dietrich, Howe, Weiss, Davis, and Hopkins dissenting)
- If the Council fails to make an appointment, allow them to vote to leave the seat vacant for a certain period of time (to be determined by CRC; 6 to 9 months discussed). If they fail to approve an appointment or maintain the vacancy, a special election within 120 days is required. (Unanimous in favor)
- If an appointment is made, an election should occur at the next general municipal election to fill the balance of the unexpired term. (Unanimous in favor)
- Limit on the maximum number of appointees; no appointment allowed if it would result in more than two appointed members serving at the same time. (9 in favor -1

dissenting vote by Committee Member Walker)

- Eliminate the current distinction between voluntary and involuntary vacancies; treat all vacancies the same regardless of the reason for the vacancy. (Unanimous in favor)

Public comment: 7:45 p.m.

Steve Scandalis provided comments regarding the following points: comment that allowing an appointment of two years or less opens up the same maneuvering that was there which lead to the change in 1975; comment that if council fails to agree on an appointee, that would possibly force a special election and may introduce a financial pressure to break the deadlock to agree on a candidate, which may not be the best for the residents of the City; expressed support for using the charter to narrow the options, reducing the opportunity for creative interpretation, and politicizing the decision; expressed support for placing the cap on the number of appointees at one to avoid multi-year and multi-seat manipulation; comment that extending the time of having a possible 3 to 3 vote is not necessarily a problem and means that the council must make a more convincing argument to their colleagues and the public, and to re-vote; requested consideration of the vote needed to appoint, and consideration of how an abstention should be handled.

Public comment closed 7:49 p.m.

Concluding discussion included:

- Discussion of the number of votes it would require to make an appointment;
- Discussion of additional subcommittee meeting(s), if needed;
- Discussion of next steps and guidance to staff;
- Request to get responses to some of the questions in the materials submitted by Committee Member Davis; and
- Request to place an item on the next agenda discussion of how to present the recommendations to Council.

Assistant City Attorney Melissa Tronquet provided concluding remarks on the next steps for the Committee to finalize recommendations to go to Council.

ADJOURNMENT

Chair Stone adjourned the meeting at 8 p.m.



City of Sunnyvale

Meeting Minutes - Final Charter Review Committee

Thursday, March 8, 2018

6:00 PM

Human Resources Training Room, 505 W.
Olive Avenue, Suite 202, Sunnyvale, CA
94086

CALL TO ORDER

Chair Lawrence Stone called the meeting to order at 6 p.m.

ROLL CALL

Present: 9 - Chair Lawrence Stone
Member Linda Davis
Member Hannalore Dietrich
Member Melinda Hamilton
Member Dawn Hopkins
Member John Howe
Member Marc Ketzel
Member Richard Mehlinger
Member Jack Walker

Absent: 2 - Vice Chair Carol Weiss
Member Amanda Richey

ORAL COMMUNICATIONS

Serge L. Rudaz encouraged the committee to take enough time to carefully tie up any loose ends to avoid unintended consequences and to generate its own report to present to the City Council.

Steve Scandalis spoke regarding a letter he sent to the committee.

CONSENT CALENDAR

1 [18-0224](#) Approve Charter Review Committee Meeting Minutes of
February 22, 2018

City Clerk Kathleen Franco Simmons reported a correction to the minutes due to a technological error and stated copies of the corrected version have been provided to the committee.

Public comment opened at 6:08 p.m.

Zachary Kaufman commented that the minutes did not accurately reflect his comments and stated that what he was getting at was possibly enabling having a secondary body approve whatever the City Council's choice is.

Public comment closed at 6:10 p.m.

MOTION: Committee Member Mehlinger moved and Committee Member Davis seconded the motion to amend the minutes of the Charter Review Committee Meeting Minutes of February 22, 2018 to indicate as Mr. Kaufman said, that he wanted the Neighborhood Associations to approve the appointment rather than to make the appointment.

The motion carried by the following vote:

Yes: 8 - Chair Stone
Member Davis
Member Dietrich
Member Hopkins
Member Howe
Member Ketzel
Member Mehlinger
Member Walker

No: 0

Absent: 2 - Vice Chair Weiss
Member Richey

Abstain: 1 - Member Hamilton

GENERAL BUSINESS

2 [18-0225](#) Review of Draft Amendment to Charter Section 604

Assistant City Attorney Melissa Tronquet provided the report.

The committee reviewed the proposed Charter language from the 2/22/2018 meeting. Discussion, questions, comments and consensus included:

- Comments on section (d):
- Question of the rationale for why section (d) doesn't specify that the appointment

would be until the next election, rather than the next general municipal election;

- Comment that it wasn't clear that it was absolutely settled as that;
- Support for the general municipal election approach as that allows the voters to consider all the City Council races together, the primary may have less voter turnout, and that the possibility of a five-seat election when the vacancy is among the three seats not up for election is about a 20% chance of that being the case;

- Comments on section (a)(6):

- Comment relating to involuntary removal, with a suggestion to phrase it in such a way as to identify one or two things that people generally think of, such as mental incapacity;
- Comment that there are too many options and it would be better to leave it up to common sense;

- No additional comments on sections (a) or (b);

- Comments on section (c):

- Suggestion to include up front that the City Council can explicitly choose to call a special election, not just as a failure mode if they can't decide on an appointment after 60 days;

- Comment that Council should also be able to choose from the outset to leave it vacant;

- Comment that having the three options listed here may be more flexible;

- Recommendation to strike the leave vacant option because it may not mathematically make sense to have the option to leave it vacant; so, in this section there would be only the two options, by special election or by appointment;

- Support for including the vacant option;

- Support for adding to "... by appointment by affirmative vote of at least four of the remaining council members..." the phrase: "...or the Council may call a special election."

- Suggestion to resolve the question by increasing the 120 days from the date of calling a special election to 180 days; that would allow for striking the language about consolidation because the periods are the same; it could be left vacant for 6 months or up to 8 months because of the 60-day period;

- Discussion of pros and cons with a 180-day vacancy;

- Comments that a lengthy vacancy can result in ties and is a disservice to constituents;

- Suggestion to list section (c) as an option to appoint, (d) is an option to elect, etc.;

- Comment that the vote to appoint shouldn't have to be higher than four;

- Discussion of the phrase “from time to time”;
- Discussion of the phrase “which may include, but is not limited to...” and suggestion to end the sentence at “public process for appointment”;
- Discussion of replacing the word “policy” with “an ordinance” so that the process is in place before a vacancy occurs;
- Preliminary motion or straw vote: Should section (c) language be modified to eliminate the words “from time to time” and the last clause “...which may include...” to the end of the sentence? 8 - 0 - 1 (8 in favor; 0 opposed, 1 abstention by Committee Member Dietrich)

Public hearing opened at 7:01 pm

Steve Scandalis spoke to the process of taking public comment. Scandalis recommended on section (c), in the last sentence, the word “may” should become “shall”; he reiterated that the charter should narrow the options, and not leave things up to changes later; reiterated support for it to be vacant for an extended period of six to nine months, questioned how an abstention would affect the four affirmative votes needed to appoint. Regarding section (d), the first paragraph, Scandalis recommended the phrase “through the next General Municipal Election” be “the next available consolidated election” to have somebody serve until the next cost-effective point. Scandalis indicated that the clause as written appears to allow two-plus years’ appointment which the committee tried to make shorter. Regarding section (g), Scandalis advocated for no more than one of the members is a better option, both for appearances, and for acceptance by the public. Scandalis spoke in support of the addition of section (h).

Public hearing closed at 7:10 p.m.

Chair Stone facilitated continued discussion and motions on section (c):

PRELIMINARY MOTION: Committee Member Davis moved and Committee Member Howe seconded the motion that the following changes be made to the second sentence in part (c), subject to review by the City Attorney’s office strike the words “from time to time” and the final clause that begins with “which” and ends with “appointee.”

The motion carried by the following vote: Unanimous

PRELIMINARY MOTION: Committee Member Howe moved and Committee Member Mehlinger seconded the motion that the word “policy” be changed to “an

ordinance”.

The motion carried by the following vote: 5 - 4 (5 in favor by Committee Members Mehlinger, Dietrich, Davis, Howe, Hopkins; 4 opposed by Committee Members Ketzal, Stone, Hamilton, Walker)

Chair Stone facilitated continued discussion and motions on section (d):

- Clarification that section (d) as written indicates an appointment would be to fill a vacancy only until the next general municipal election, not the next general municipal election for that seat;
- Discussion regarding how this section interacts with term limits; any modification to term limits would require a separate charter amendment;
- Discussion regarding an appointment made during a period that is too late to file for an upcoming election and would result in an appointee serving over two-and-a-half years;
- Discussion regarding including more options such as the appointee would serve until any upcoming consolidated election or statewide election, such as a March or June primary;
- Suggestion to change “General Municipal Election” to “the next consolidated election”

PRELIMINARY MOTION: Committee Member Howe moved and Committee Member Hamilton seconded the motion to change “General Municipal Election” to “the next consolidated election”.

The motion carried by the following vote: 8 - 0 - 1 (8 in favor; 0 opposed; 1 abstention by Committee Member Mehlinger)

PRELIMINARY MOTION: Committee Member Walker moved and Committee Member Dietrich seconded the motion to amend the section to say that the appointment should be no longer than one year.

The motion failed by the following vote: 2 - 7 (2 in favor by Committee Members Walker and Dietrich; 7 opposed by Committee Members Mehlinger, Davis, Hopkins, Ketzal, Stone, Hamilton, Howe)

PRELIMINARY MOTION: Committee Member Howe moved and Committee Member Walker seconded the motion to strike the phrase “commencing at the first regular meeting in January, at which the City Council shall certify the election results, and shall continue until a successor is elected and qualified.”

FRIENDLY AMENDMENT: Committee Member Hamilton suggested inclusion of the

phrase “and until a successor is elected and qualified.”

The friendly amendment was accepted by the makers of the motion and second.

The motion carried by the following vote: Unanimous

Chair Stone facilitated continued discussion and motions on section (e):

PRELIMINARY MOTION: Committee Member Mehlinger moved and Committee Member Hamilton seconded the motion that section (e) be struck.

AMENDED MOTION: Committee Member Mehlinger amended the motion to include that the other half of this motion would be to say that the special election timeframe would be 240 days from the date the vacancy is declared.

Committee Member Hamilton declined to accept the amendment of the motion.

Committee Member Mehlinger withdrew the amended motion.

FRIENDLY AMENDMENT: Committee Member Hamilton offered a friendly amendment to add to section (e) to give the Council the ability to choose to call a special election instead of an appointment.

Committee Member Mehlinger accepted the friendly amendment.

RESTATED MOTION: Committee Member Mehlinger restated the amended motion is to strike all the existing text of section (e), and adding the choice that at any point during the 60-days when the Council is considering an appointment, they may instead by four affirmative votes call a special election.

The motion carried by the following vote: Unanimous

Chair Stone facilitated continued discussion and motions on section (f):

PRELIMINARY MOTION: Committee Member Mehlinger moved and Committee Member Davis seconded the motion that the phrase “within one hundred and twenty days” be struck and re-written to “within two hundred and forty days of the date when the vacancy has been declared.”

AMENDED AND RESTATED MOTION: Committee Member Mehlinger amended and restated the motion that, with the previous clause allowing the City Council to call a special election without a failure, or alternatively, “If the City Council fails to fill the vacancy by appointment or decides to call a special election, it shall be within two hundred and forty days” or “If the City Council chooses to call a special election or fails to fill the vacancy by appointment, it shall be within two hundred and forty

days.”

FRIENDLY AMENDMENT: Chair Stone offered a friendly amendment to say that if the City Council “elects” to call a special election.

Committee Member Mehlinger accepted the friendly amendment.

The first reading of the votes, the motion carried by the following vote: 6 - 3 (6 in favor by Committee Members Mehlinger, Dietrich, Davis, Stone, Walker, Howe; 3 opposed by Committee Members Ketznel, Hamilton, Hopkins)

Following a request to change a vote, the motion carried by the following vote: 5 - 4 (5 in favor by Committee Members Mehlinger, Davis, Stone, Walker, Howe; 4 opposed by Committee Members Ketznel, Hamilton, Hopkins, Dietrich)

Chair Stone facilitated continued discussion and motions on section (g):

PRELIMINARY MOTION: Committee Member Howe moved and Committee Member Walker seconded the motion to amend section (g) to change “two” to “one” for the number of appointments in the last sentence.

The motion failed by the following vote: 2 - 5 (2 in favor by Committee Members Howe and Walker; 5 opposed by Committee Members Mehlinger, Davis, Ketznel, Stone, Hopkins; 2 abstained by Committee Members Dietrich and Hamilton)

PRELIMINARY MOTION: Committee Member Mehlinger moved and Committee Member Davis seconded the motion that on section (g) strike “one hundred and twenty” and replace with “one hundred and eighty”.

The motion carried by the following vote: 8 - 1 (8 in favor by Committee Members Mehlinger, Dietrich, Davis, Stone, Walker, Howe, Ketznel, Hopkins, Dietrich; 1 abstention by Committee Member Hamilton)

Chair Stone facilitated continued discussion and motions on section (h):

PRELIMINARY MOTION: Committee Member Mehlinger moved and Committee Member Howe seconded the motion to strike section (h).

The motion carried by the following vote: Unanimous

- 3** [18-0243](#) Determine Report Preparation and Date for Charter Review Committee Final Recommendation to City Council on Amendment of Charter Section 604

Assistant City Attorney Melissa Tronquet provided a brief report and suggested the item could be continued to the next meeting. City Clerk Kathleen Franco Simmons

provided additional information.

Public hearing opened at 8:22 pm

Steve Scandalis spoke in support of continuing today's discussion until the March 22 meeting to bring back the formalized wording, set April 12 as a target date to have a report draft, and then April 26 to approve the report. Scandalis recommended the report format include a breakdown similar to the attachment in the report.

Public hearing closed at 8:24 pm

MOTION: Committee Member Mehlinger moved and Committee Member Howe seconded the motion to continue Item 3 to the next meeting.

The motion carried by the following vote: Unanimous

INFORMATION ONLY ITEMS

[18-0244](#) Calendar Screenshots - Provided by Committee Member Mehlinger

ADJOURNMENT

Chair Stone adjourned the meeting at 8:25 p.m.



City of Sunnyvale

Meeting Minutes - Final Charter Review Committee

Thursday, March 22, 2018

6:00 PM

Human Resources Training Room, 505 W.
Olive Avenue, Suite 202, Sunnyvale, CA
94086

CALL TO ORDER

Chair Lawrence Stone called the meeting to order at 6:01 p.m.

ROLL CALL

Present: 10 - Chair Lawrence Stone
Vice Chair Carol Weiss
Member Linda Davis
Member Melinda Hamilton
Member Dawn Hopkins
Member John Howe
Member Marc Ketzel
Member Richard Mehlinger
Member Amanda Richey
Member Jack Walker

Absent: 1 - Member Hannalore Dietrich

ORAL COMMUNICATIONS

Steve Scandalis spoke regarding the background and scope of the review of Charter section 604 and provided recommendations.

GENERAL BUSINESS

1 [18-0293](#) Review and Approval of Draft Amendment to Charter Section 604

Assistant City Attorney Melissa Tronquet provided a report.
The committee reviewed the proposed Charter language from the 3/8/2018 meeting.

Discussion, questions, and comments included:

- Discussion of the rationale in sections (e) and (f) for choosing two hundred and forty days and one hundred and eighty days in the two instances for calling a special election;

- Discussion of section (f) relating to a maximum of two appointments;
- Discussion of section (c) clarifying the context for requiring affirmative votes of at least four members for calling a special election and for filling by appointment;
- Clarification of the term in (f): “if the appointment would result in more than two of the members serving on the council having been appointed...” to “members currently serving on the Council as appointees”;
- Discussion of whether the intent is to allow the choice to fill by appointment, call a special election or leave the seat vacant;
- Discussion of including a qualifier that if a seat is up for election within 240-days before the next general or special election, the council may leave the seat vacant;
- Discussion of the fail-safe mechanism or default, that if the Council does not make an appointment it shall call an election;

Public Hearing opened at 6:46 p.m.

Steve Scandalis provided comments, questions and suggestions on sections (a), (c), (d), and (f).

Public Hearing closed at 6:55 p.m.

Discussion, questions, and comments included:

- Discussion of the difference between a temporary appointment for military leave and a medical leave resulting in a vacancy;
- Clarification that a temporary appointment for a military leave would be outside this process and would count toward the maximum of two appointees;

MOTION: Committee Member Howe moved and Committee Member Hamilton seconded the motion to accept the language in section (f) as shown in redline text.

The motion carried unanimously.

Discussion, questions, and comments included:

- Discussion of clarifying sections (c) and (e), to change “...call a special election...” to “...call an election ...”;
- Discussion of clarifying calling an election to “fill the vacancy” vs. “fill the seat”;
- Discussion of various punctuation, eliminating “two hundred and forty days” in section (c) as it is covered in section (e), preference for “call an election”, and other points.

MOTION: Committee Member Howe moved and Committee Member Walker seconded the motion to accept section (c) as shown in redline text.

FRIENDLY AMENDMENT: Committee Member Mehlinger offered a friendly amendment to change: "...or call..." to: "... by calling an election." Committee Members Howe and Walker accepted the friendly amendment.

The motion carried unanimously.

MOTION: Committee Member Howe moved and Committee Member Walker seconded the motion to re-affirm the word "ordinance" in section (c).

The motion carried by the following vote: 9 – 1 (9 in favor, 1 opposed by Committee Member Hamilton)

MOTION: Committee Member Davis moved and Committee Member Ketzel seconded the motion to amend the last sentence of section (c) to establish a public process for appointment.

The motion carried by the following vote: Unanimous

Discussion, questions, and comments on section (d) included:

- Reconsideration of the discussion of having a general municipal election or consolidating with a statewide; discussion of concerns about having five seats up for election at one time, with a 21.4% chance of that happening, if one of three council seats that are not currently up for election to become vacant; the problem with a forced statewide election is that if a seat goes vacant in the second half of its term, that seat will go up for the statewide election, then immediately go up for the following general municipal election, 6 to 9 months later, with a 33% chance of that happening; the 21% chance scenario is better than the 33% chance of a double election.

MOTION: Committee Member Mehlinger moved and Committee Member Howe seconded the motion to strike "next statewide election" in section (d) and go back to "until the next general municipal election".

RESTATED MOTION: Committee Member Mehlinger restated the motion is "shall hold office until the next general municipal election" and then everything between "or" and "whichever occurs sooner" should be struck.

The motion failed by the following vote: 1 – 9 (1 in favor by Committee Member Mehlinger, 9 opposed)

MOTION: Committee Member Davis moved and Committee Member Mehlinger seconded the motion that the language in section (d) be changed to “If a vacancy is filled by appointment, the appointee shall hold office until the next general municipal election or a special municipal election consolidated with an earlier statewide election”, or in other words, strike “whichever occurs sooner.”

FRIENDLY AMENDMENT: Committee Member Mehlinger offered a friendly amendment to amend the motion to give staff direction to come up with language indicating that the Council has the power to choose whether the term ends at the next statewide or the next general municipal election.

RESTATED FRIENDLY AMENDMENT: Committee Member Mehlinger stated the friendly amendment is to give staff direction to come up with language to turn what was previously decided to be a mandatory duty of the Council to have an election to fill the vacancy consolidated with the next statewide election or the next general municipal election and change that to something that is discretionary. Committee Member Davis accepted the friendly amendment.

The motion as amended failed by the following vote: 4 – 6 (4 in favor by Committee Members Hopkins, Davis, Hamilton, Mehlinger, 5 opposed by Committee Members Weiss, Ketzler, Stone, Howe, Walker)

MOTION: Committee Member Howe moved and Committee Member Walker seconded the motion to accept the language in section (d) as written.

The motion carried by the following vote: Unanimous

MOTION: Committee Member Walker moved and Committee Member Howe seconded the motion to accept section (e) as written in redline text.

The motion carried by the following vote: Unanimous

MOTION: Committee Member Davis moved to take a second vote on the new dates that have been put into the recommended language. Following discussion Committee Member Davis withdrew the motion.

MOTION: Committee Member Howe moved and Committee Member Hamilton seconded the motion to accept all the changes voted on at this meeting.

The motion carried by the following vote: Unanimous

- 2 [18-0294](#) Determine Report Preparation and Date for Charter Review Committee Final Recommendation to City Council on Amendment of Charter Section 604 - Continued from March 8, 2018

Public hearing opened at 8:08 pm

Steve Scandalis provided comments relating to a five-member subcommittee.

Public hearing closed 8:08

MOTION: Committee Member Howe moved to form a subcommittee of up to five members to draft a report and bring it back to the Committee of the whole for approval, recommended the group makes Committee Member Amanda Richey as the Chair, and provided direction to staff to facilitate this in any way needed including meeting room if necessary. Member Howe requested volunteers for the Subcommittee. Members Linda Davis, Dawn Hopkins, and Richard Mehlinger volunteered.

Committee Member Richey consented to be on the Subcommittee and to serve as Chair.

AMENDED MOTION: Committee Member Howe amended the motion that the Chair can add one more member to the Subcommittee.

The motion carried by the following vote: Unanimous

ADJOURNMENT

Chair Stone adjourned the meeting at 8:16 p.m.



City of Sunnyvale
Meeting Minutes - Final
Charter Review Committee

Thursday, April 12, 2018

6:00 PM

Human Resources Training Room, 505 W.
Olive Avenue, Suite 202, Sunnyvale, CA
94086

CALL TO ORDER

Chair Stone called the meeting to order at 6 p.m.

ROLL CALL

Present: 11 - Chair Lawrence Stone
Vice Chair Carol Weiss
Member Linda Davis
Member Hannalore Dietrich
Member Melinda Hamilton
Member Dawn Hopkins
Member John Howe
Member Marc Ketzel
Member Richard Mehlinger
Member Amanda Richey
Member Jack Walker

Committee Member Hamilton arrived at 6:05 p.m.; Committee Member Davis arrived at 6:10 p.m.

ORAL COMMUNICATIONS

No speakers.

CONSENT CALENDAR

1.A [18-0233](#) Approve Charter Review Committee Meeting Minutes of March 8, 2018

MOTION: Committee Member Howe moved and Committee Member Hopkins seconded the motion to approve the Charter Review Committee Meeting Minutes of March 8, 2018 as submitted.

The motion carried by the following vote: Unanimous

GENERAL BUSINESS

- 2 [18-0345](#) Review and Discussion of Subcommittee’s proposal for revision to the March 22nd draft recommendation for amending Charter Section 604 and possible action to adopt recommendation for amending Charter Section 604.

Assistant City Attorney Melissa Tronquet provided a brief introduction.

Committee Member/Subcommittee Chair Amanda Richey provided information regarding the Subcommittee’s draft report.

Discussion, comments and recommendations included:

- Recommendation to standardize language for consistency;
- Recommendation to take the last sentence of subsection (c) “The Council shall adopt an ordinance establishing a public process for appointment” and move it to a new section following section (d), becoming the new section (e);
- Discussion about whether “statewide elections” included statewide special elections;
- Discussion of adding the words “a regularly scheduled” statewide election, or using “statewide, general or primary election”;
- Correction in section (b), to change “In the event of a vacancy in the Council” to “In the event of a vacancy on the Council”;
- Request to consider delaying final decision about section (d) until the committee addresses the supplemental materials provided by Committee Member Davis.

Public comment opened at 6:14 p.m.

Steve Scandalis provided comments relating to the materials provided and the perspective of the public on the scope of the subcommittee’s charge to draft the report.

Serge L. Rudaz requested the other speaker to represent comments as his own and not as representative of the public, as he has a different understanding.

Public comment closed at 6:25 p.m.

MOTION: Committee Member Mehlinger moved and Committee Member Howe seconded the motion to request the City Attorney to go through and make sure the

terms and capitalization are consistent, i.e. City Council, Council, and Councilmember, and prepare a version with those made internally consistent. The motion carried by the following vote: Unanimous

MOTION: Committee Member Mehlinger moved and Committee Member Hamilton seconded the motion to move the final sentence of section (c) to after section (d), to become section (e) as shown on the screen, and re-lettering the remaining sections. The motion carried by the following vote: Unanimous

MOTION: Committee Member Mehlinger moved to exclude statewide special elections for purposes of section (d). The motion as stated was not seconded.

MOTION: Committee Member Richey moved a straw motion and Committee Member Walker seconded the motion to keep the language in section (d) as is. The motion carried by the following vote: 9 - 2 (9 in favor, 2 opposed by Committee Members Mehlinger and Davis)

3 [18-0344](#) Review and Discussion of Draft Report to the City Council on Charter Review Committee Recommendations for Amending Charter Section 604

Subcommittee Chair Richey reviewed the draft Report to Council.

Discussion, comments and recommendations included:

- Suggestion to revise the reference to future cost savings on page 3, as costs will depend on future actions of future councils;
- Request to review supplemental materials;
- Suggestion to articulate the committee's main guiding concepts and goals;
- Request for additional input and assistance with the introductory paragraph and other areas in brackets.

Public comment opened at 6:53 p.m.

Steve Scandalis provided comments on the draft report.

Public comment closed at 7:03 p.m.

Committee Member Linda Davis provided a presentation of supplemental materials dated 4/12/2018 of charts depicting example cases of vacancies under two

scenarios.

Discussion, comments and recommendations included:

- Suggestion to simplify the complex information provided in the charts using specific scenarios and provide information to the effect that there are certain scenarios such as a short-term appointment that leads to higher costs;
- Suggestion to provide a simple graphic flow chart and to use this to show the edge cases or outlying cases that might occur;
- Comments regarding probabilities for the different cases with the range of dates;
- Comment in support of adding the charts as an addendum but in a more general fashion.

Public comment opened at 7:44 p.m.

Steve Scandalis provided comments on the Committee's recommendation and the charts provided in the supplemental materials.

Public comment closed at 7:49 p.m.

Continued discussion, comments, and recommendations included:

- Discussion of using more or less specific cost figures in the report;
- Discussion of using specific individuals' names in the report or using references to seat number only;
- Suggestion to include what other cities do and include a flow chart;

MOTION: Committee Member Howe moved a straw vote and Committee Member Mehlinger seconded the motion to leave the names in the report.

The motion carried by the following vote: 6 - 5 (6 in favor by Committee Members Richey, Weiss, Mehlinger, Hopkins, Hamilton and Stone; 5 opposed by Committee Members Ketzler, Deitrich, Howe, Walker and Davis)

MOTION: Committee Member Mehlinger moved and Committee Member Hamilton seconded the motion to ask: Should the subcommittee provide visuals demonstrating specific cases, as the example provided by Committee Member Davis?

The motion carried by the following vote: 10 - 1 (10 in favor, 1 opposed by Committee Member Ketzler)

ADJOURNMENT

Chair Stone adjourned the meeting at 8:15 p.m.



City of Sunnyvale

Administrative Minutes - Draft Charter Review Committee

Thursday, April 26, 2018

6:00 PM

Human Resources Training Room, 505 W.
Olive Avenue, Suite 202, Sunnyvale, CA
94086

CALL TO ORDER

Chair Stone called the meeting to order at 6 p.m.

ROLL CALL

Present: 10 - Chair Lawrence Stone
Vice Chair Carol Weiss
Member Linda Davis
Member Melinda Hamilton
Member Dawn Hopkins
Member John Howe
Member Marc Ketzell
Member Richard Mehlinger
Member Amanda Richey
Member Jack Walker
Absent: 1 - Member Hannalore Dietrich

ORAL COMMUNICATIONS

None.

CONSENT CALENDAR

- 1.A 18-0292** Approve Charter Review Committee Meeting Minutes of March 22, 2018
- 1.B 18-0406** Approve Charter Review Committee Meeting Minutes of April 12, 2018

MOTION: Committee Member Davis moved and Committee Member Mehlinger

seconded the motion to amend the March 22, 2018 minutes, on page 2, the bullet point above “Motion”, to change the last half of the sentence to “but would count toward the maximum of two appointees.”

The motion carried by the following vote: Unanimous

Public comment opened at 6:06 p.m.

Steve Scandalis requested inclusion in the April 12 meeting minutes that Chair Stone requested he provide written input.

Public comment closed at 6:08 p.m.

MOTION: Committee Member Davis moved and Committee Member Mehlinger seconded the motion to amend the April 12, 2018 minutes, on page 3, the last sentence, to strike “three ” and replace with “two” to indicate "two scenarios.”

The motion carried by the following vote: Unanimous

MOTION: Committee Member Walker moved and Committee Member Weiss seconded the motion to approve the Charter Review Committee Meeting Minutes of March 22, 2018 as amended.

The motion carried by the following vote: Unanimous

MOTION: Committee Member Weiss moved and Committee Member Walker seconded the motion to approve the Charter Review Committee Meeting Minutes of April 12, 2018 as amended.

The motion carried by the following vote: Unanimous

GENERAL BUSINESS

- 2** **18-0407** Review and Approval of Final Charter Review Committee Report and Recommendation to City Council Regarding Amending City of Sunnyvale Charter Section 604 (Council Vacancies)

Committee Member Amanda Richey provided a report.

Public hearing opened at 6:42 p.m.

Steve Scandalis provided recommendations on the report and submitted written materials.

Public hearing closed at 6:57 p.m.

MOTION: Committee Member Richey moved and Committee Member Mehlinger seconded the motion modify Section 1, to delete the second bullet which reads: "Vacancies should be as short a duration as possible" as it is redundant with the fifth bullet which reads: "A Council seat should not be left vacant for an extended period of time."

FRIENDLY AMENDMENT: Committee Member Mehlinger offered a friendly amendment to move the fifth bullet into the second's place. Committee Member Richey accepted the friendly amendment and clarified that it is to delete the second bullet and move the fifth bullet into its place.

The motion as amended carried by the following vote: 8 – 2 (Committee Members Howe and Richey dissented)

MOTION: Committee Member Richey moved and Committee Member Hamilton seconded the motion with regard to Page 4, the second-to-last bullet which reads: "Higher voter turnout is considered to be better", to keep it as is.

The motion carried by the following vote: 7 – 3 (Committee Members Ketzell, Weiss and Stone dissented)

MOTION: Committee Member Richey moved and Committee Member Walker seconded the motion with regard to the paragraph above Section 4 which lists the charter amendments, to add the amendment referenced by Mr. Scandalis as listed in the charter for the 1982 amendment.

The motion carried by the following vote: Unanimous

MOTION: Committee Member Richey moved and Committee Member Mehlinger seconded the motion with regard to Section 6 for Cost Savings and Fiscal Impact, to remove all of the language that discusses cost savings to candidates, in the first

and third paragraph and any references in the introduction.

Committee Member Richey restated the motion as removing the language that references the benefit of cost savings to candidates from the first and the third

paragraph.

The motion carried by the following vote: Unanimous

MOTION: Committee Member Richey moved and Committee Member Hamilton seconded the motion to keep the language as is in paragraph 2 of Section 6 with the cost approximations of \$800,000 to \$1,300,000.

Chair Stone ruled the motion out of order.

MOTION: Committee Member Hamilton moved and Committee Member Mehlinger seconded the motion to amend the language in Section 6, paragraph 2 to add an explanation in a footnote that the \$800,000 to \$1.3 million estimate comes from the Santa Clara County Registrar of Voters office.

The motion carried by the following vote: Unanimous

MOTION: Committee Member Richey moved and Committee Member Mehlinger seconded the motion to revise Section 9 to delete the end of the first sentence: “when voting upon a Charter amendment that gives the Council the power to fill vacancies by appointment.”

FRIENDLY AMENDMENT: Committee Member Mehlinger offered a friendly amendment to, including the deletion, to amend the sentence: “...to have an open and transparent appointment process defined by an ordinance.” Following discussion, Committee Member Mehlinger withdrew the friendly amendment.

The motion carried by the following vote: Unanimous

MOTION: Committee Member Richey moved and Committee Member Mehlinger seconded the motion to make edits to the example chart attachments: revise the header to read “Attachment 6”; include the starred footnote from the second and third page on the first page; and edit the text next to the gold box to change “2020” to “2022”.

The motion carried by the following vote: Unanimous

MOTION: Committee Member Richey moved and Committee Member Hamilton

seconded the motion to revise Section 11, first sentence, to read: “The Committee had many thoughtful and detailed discussions...”

The motion carried by the following vote: Unanimous

MOTION: Committee Member Richey moved and Committee Member Hamilton seconded the motion in reference to number 7 on the document Steve Scandalis provided, relating to Section (c) of the “Committee’s Charter Recommendation” table, to correct the explanation to: “If the Council cannot achieve a decision within 60 days, provision (f) mandates that an election be called to fill the vacancy. See provision (f)...”

The motion carried by the following vote: Unanimous

MOTION: Committee Member Richey moved and Committee Member Mehlinger seconded the motion to delete the second paragraph in Section (e) of the explanation in the chart.

The motion carried by the following vote: Unanimous

MOTION: Committee Member Richey moved and Committee Member Mehlinger seconded the motion to edit footnotes 7 and 8 on Page 14, to read: “See footnote 6.”

The motion carried by the following vote: Unanimous

MOTION: Committee Member Mehlinger moved and Committee Member Weiss seconded the motion in reference to number 10 on the document provided by the member of the public, to add a bullet to the bullets in Section 10 Flow Chart and Examples, reading: “If the Council decides to fill the vacancy by election, an election will be called within two hundred and forty (240) days of the date the vacancy is declared” and in addition, a second bullet point: “If two appointees are serving on the Council, an election will be called within 180 days of the date the vacancy is declared.”

The motion failed by the following vote: 1 – 9 (1 in favor by Councilmember Weiss)

MOTION: Committee Member Howe moved and Committee Member Weiss seconded the motion to accept the entire report as amended.

The motion carried by the following vote: Unanimous

ADJOURNMENT

Chair Stone adjourned the meeting at 7:26 p.m.