



## City of Sunnyvale

### Notice and Agenda

### City Council

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Monday, August 22, 2022

7:00 PM

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

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#### **Special Meeting: Public Hearing/General Business - 7 PM**

**Meeting online link: <https://sunnyvale-ca-gov.zoom.us/j/81221808828>**

#### **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 August 9, 2022)*

#### **Public Participation**

- *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/81221808828>*

*Meeting call-in telephone number: 833-548-0276 | Meeting ID: 812 2180 8828  
(\*9 to request to speak | \*6 to unmute/mute)*

- *Watch the City Council meeting at <http://youtube.com/SunnyvaleMeetings> or on television over Comcast Channel 15, AT&T Channel 99*
- *Submit written comments to the City Council no later than 4 hours prior to the meeting start to [council@sunnyvale.ca.gov](mailto:council@sunnyvale.ca.gov) or by mail to:  
City Clerk, 603 All America Way, Sunnyvale, CA 94086*
- *Review recordings of this meeting and past meetings at <https://sunnyvaleca.legistar.com/calendar.aspx> or <http://youtube.com/SunnyvaleMeetings>*

#### **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](mailto:cityclerk@sunnyvale.ca.gov) (28 CFR 35.160 (b) (1)).*

### **7 P.M. SPECIAL COUNCIL MEETING (Public Hearing/General Business)**

*Pursuant to Council Policy, City Council will not begin consideration of any agenda item after 11:30 p.m. without a vote. Any item on the agenda which must be continued due to the late hour shall be continued to a date certain. Information provided herein is subject to change from date of printing of the agenda to the date of the 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.*

- 1      22-0859**      Adopt a Resolution Appointing Linda Sell to the City Council to Represent Council District 1 for a Full-Term of Four Years Beginning in 2023 in Lieu of an Election; and Cancelling the November 8, 2022, General Municipal Election for City Councilmember Council District 1, Pursuant to California Elections Code Section 10229

**Recommendation:** Staff makes no recommendation. This report is being presented to City Council to facilitate discussion at the public hearing and for Council to consider appointing Linda Sell to Council District 1 or move ahead with an election for District 1.

### **ADJOURNMENT**

### **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

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**22-0859**

**Agenda Date: 8/22/2022**

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### **REPORT TO COUNCIL**

#### **SUBJECT**

Adopt a Resolution Appointing Linda Sell to the City Council to Represent Council District 1 for a Full-Term of Four Years Beginning in 2023 in Lieu of an Election; and Cancelling the November 8, 2022, General Municipal Election for City Councilmember Council District 1, Pursuant to California Elections Code Section 10229

#### **BACKGROUND**

On June 7, 2022, the City Council adopted Resolution No. 1120-22, calling and giving notice of the holding of a general municipal election for the purpose of electing one person each from Council Districts 1, 3, and 5 to the City Council for full four-year terms.

As of the close of the nomination period on Friday, August 12, 2022, only one person, Linda Sell, filed nomination papers to run for the office of City Councilmember representing Council District 1.

California Elections Code (EC) Section 10229 allows the City Council to take one of the following courses of action when only one person has filed nomination papers for an office: (1) Appoint to the office the person who has been nominated, or (2) hold the election if either no one or only one person has been nominated. The City Clerk certification of facts required by EC Section 10229 is included as Attachment 3 to this report.

#### **EXISTING POLICY**

California Elections Code Section 10229 (Attachment 2)  
Sunnyvale Charter Section 1400 (General Municipal Elections)  
Sunnyvale Municipal Code Section 2.28.030 (In Lieu Petitions for Cost of Candidate's Statement)  
Council Policy 7.3.11 (Seating Arrangements/City Council) (Attachment 4)

#### **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**

This report provides the City Council an opportunity to consider appointing Linda Sell, the only candidate for Council District 1, to the City Council in lieu of conducting an election for this office. If appointed, Linda Sell would take office and serve on the City Council in the same manner as if elected to the office instead of being appointed. Cancelling the election would also eliminate the ability for another elector from Council District 1 to file as a write-in candidate for Council District 1.

**City Council Seniority**

Council Policy 7.3.11 (Seating Arrangements/City Council) identifies the center seat for the Mayor and the seat on either side of the Mayor for the Vice Mayor and determines the order in which Councilmembers select their seat from among those remaining after the Mayor and Vice Mayor's seats are determined.

Councilmembers select their seat in the order of most senior to least senior. Seniority is determined by the length of continuous time of service on the City Council. When two or more Councilmembers have equivalent time of service, those Councilmembers shall be given priority in seat selection by the highest number of votes in their most recent election. Council seniority is also used to establish the order Councilmembers are listed on City letterhead, the voting board in Council Chambers and other administrative processes.

Should the City Council decide to appoint Linda Sell to Council District 1, Linda would end up with the least Council Seniority since Linda would receive zero votes by the nature of being appointed and the Councilmembers elected to Council Districts 3 and 5 will have an equivalent time of service, but more votes than Linda.

**FISCAL IMPACT**

The County Registrar of Voters estimates the cost of publishing candidate statements at \$2,930 for each Council District 1 candidate, which includes the cost of ballot printing in five languages. Linda Sell provided the 100 valid signatures to qualify to have this cost waived pursuant to Sunnyvale Municipal Code section 2.28.030, which provides that the City will pay the full cost if the candidate submits 100 valid signatures.

Santa Clara County estimates that the cost of conducting the 2022 General Municipal Election for City Council District 1 will be \$16,854. The FY 2022/23 Recommended Budget includes \$489,750 for election costs.

Adopting the attached Resolution would result in an estimated \$19,784 savings by canceling the City Council District 1 Election and the associated candidate statement costs.

**PUBLIC CONTACT**

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

**ALTERNATIVES**

1. Adopt a Resolution appointing Linda Sell to the City Council to represent Council District One for a full-term of four years beginning in 2023 in lieu of an election; and cancelling the November 8, 2022, General Municipal Election for City Councilmember Council District 1, pursuant to California Elections Code Section 10229; and direct the City Clerk to not accept for filing any statement of write-in candidate which is submitted after the appointment is made.
2. Do not adopt a Resolution appointing Linda Sell to the City Council and direct staff to continue preparation for the November 8, 2022, General Municipal Election for City Councilmember Council District 1.

3. Other direction provided by Council.

**STAFF RECOMMENDATION**

Staff makes no recommendation. This report is being presented to City Council to facilitate discussion at the public hearing and for Council to consider appointing Linda Sell to Council District 1 or move ahead with an election for District 1.

Prepared by: David Carnahan, City Clerk

Reviewed by: Teri Silva, Assistant City Manager

Approved by: Kent Steffens, City Manager

**ATTACHMENTS**

1. Resolution of the City Council of the City of Sunnyvale Appointing Linda Sell to the City Council to Represent Council District 1 for a Full-Term of Four Years Beginning in 2023 in Lieu of an Election; and Cancelling the November 8, 2022, General Municipal Election for City Councilmember Electoral District 1, Pursuant to California Elections Code Section 10229
2. California Elections Code Section 10229
3. City Clerk Certification that there are not more candidates than elected offices
4. Council Policy 7.3.11 Seating Arrangements/City Council

DRAFT 8/17/2022

*Jan*

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE APPOINTING LINDA SELL TO THE CITY COUNCIL TO REPRESENT COUNCIL DISTRICT 1 FOR A FULL-TERM OF FOUR YEARS BEGINNING IN 2023 IN LIEU OF AN ELECTION; AND CANCELLING THE NOVEMBER 8, 2022, GENERAL MUNICIPAL ELECTION FOR CITY COUNCILMEMBER COUNCIL DISTRICT 1, PURSUANT TO CALIFORNIA ELECTIONS CODE SECTION 10229**

WHEREAS on June 7, 2022, the City Council adopted Resolution No. 1120-22, calling and giving notice of the holding of a general municipal election for the purpose of electing one person each from Council Districts 1, 3, and 5 to the City Council of the City of Sunnyvale for full four-year terms; and

WHEREAS, as of the close of the nomination period on Friday, August 12, 2022, only one person filed nomination papers to run for the office of City Councilmember representing District 1; and

WHEREAS, Section 10229 of the California Elections Code allows the City Council to take one of the following courses of action when only one person has filed nomination papers for an office: (1) Appoint to the office the person who has been nominated, or (2) hold the election if either no one or only one person has been nominated.

WHEREAS, pursuant to Section 10229 of the California Elections Code, a notice, (Proof of Publication), herein attached and incorporated by reference as Exhibit "A", was published on August 17, 2022, in the San Jose Mercury News, certifying these facts and the options available to the City Council; and

WHEREAS, pursuant to Section 10229 of the California Elections Code, if by the 75th day before the scheduled General Municipal Election (August 25, 2022), no person has been appointed to this office pursuant to (1) above, the election for Council District 1 is required to be held along with all other elective offices on the ballot. If an appointment is made to this office, the General Municipal Election for Council District 1 must be cancelled, but the General Municipal Election will be held for all other elective offices on the ballot; and

WHEREAS, if the City Council makes an appointment pursuant to Section 10229 of the California Elections Code, the City Clerk/Elections Official shall not accept for filing any statement of write-in candidacy for City Councilmember from Council District No. 1 which is submitted after the appointment is made; and

WHEREAS, cancelling the uncontested election for Council District 1 will save the City the unnecessary costs of holding that uncontested election; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE THAT:

1. That the above recitals are true and correct.
2. Pursuant to Section 10229 of the California Elections Code, the following action is taken:

The following person is appointed to the office to which she was nominated, and is considered to be the same as being elected, pursuant to Section 10229(a) of the California Elections Code:

<u>Name</u>	<u>Office</u>	<u>Term</u>
Linda Sell	City Councilmember Council District 1	Full-Term of four years

3. Pursuant to Elections Code Section 10229, the General Municipal Election scheduled to be held on Tuesday, November 8, 2022, to elect a candidate for City Council Member from Council District 1 is hereby cancelled because only one person is nominated to be elected in that District, and the City Council has made the above appointment. The General Municipal Election shall still be held to elect candidates for City Council Member from Council Districts 3 and 5.

SECTION 4. The person appointed shall qualify and take office and serve exactly as if elected at the General Municipal Election for the office.

SECTION 5. The City Clerk shall certify to the passage and adoption of this Resolution and so notify the Santa Clara County Registrar of Voters and Board of Supervisors of the City Council's action, and is authorized to take any other administrative actions necessary to cancel the 2022 general municipal election for Council District 1.



Adopted by the City Council at a special meeting held on August 22, 2022, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

RECUSAL:

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk  
(SEAL)

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**EXHIBIT A**

**SAN JOSE MERCURY NEWS**  
**PROOF OF PUBLICATION**

NOTE: The proof of publication is on the following page.

# San Jose Mercury News

75 E. Santa Clara St , Suite 1100  
San Jose, CA 95113  
408-920-5332

2083317

CITY OF SUNNYVALE  
CITY OF SUNNYVALE  
ACCOUNT PAYABLE DEPT  
PO BOX 3707  
SUNNYVALE, CA 94088

## PROOF OF PUBLICATION IN THE CITY OF SAN JOSE IN THE STATE OF CALIFORNIA COUNTY OF SANTA CLARA

### FILE NO. Elections Code of the State of California San Jose Mercury News

The undersigned, being first duly sworn, deposes and says: That at all times hereinafter mentioned affiant was and still is a citizen of the United States, over the age of eighteen years, and not a party to or interested in the above entitled proceedings; and was at and during all said times and still is the principal clerk of the printer and publisher of the San Jose Mercury News, a newspaper of general circulation printed and published daily in the City of San Jose, County of Santa Clara, State of California as determined by the court's decree dated June 27, 1952, Case Numbers 84096 and 84097, and that said San Jose Mercury News is and was at all times herein mentioned a newspaper of general circulation as that term is defined by Sections 6000; that at all times said newspaper has been established, printed and published in the said County and State at regular intervals for more than one year preceding the first publication of the notice herein mentioned. Said decree has not been revoked, vacated or set aside.

I declare that the notice, of which the annexed is a true printed copy, has been published in each regular or entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

08/17/2022

Dated at San Jose, California  
August 17, 2022

I declare under penalty of perjury that the foregoing is true and correct.



Principal clerk of the printer and publisher of the San Jose Mercury News

Legal No.

**Attachment 1**  
**Page 5 of 5**  
0006691534

#### CITY OF SUNNYVALE NOTICE OF CITY CLERK'S CERTIFICATION THAT THERE ARE NOT MORE CANDIDATES THAN OFFICES TO BE ELECTED

NOTICE IS HEREBY GIVEN, pursuant to Section 10229 of the Elections Code of the State of California, to the following facts relating to the general municipal election to be held on Tuesday, November 8, 2022:

As of the close of the nomination period on August 12, 2022 for the election of one (1) Member of the Councilmember District No. 1 of said City for the full term of four (4) years, there are not more candidates than offices to be elected.

The person so nominated is: **Linda Sell**  
Mother / Engineer

That Section 10229 of the Elections Code allows one of the following courses of action to be taken by the City Council:

1. Appoint to the office the person who has been nominated.
2. Appoint to the office any eligible voter if no one has been nominated.
3. Hold the election if either no one or only one person has been nominated.

On August 22, 2022, the City Council will meet to either make the appointments or direct an election to be held. The persons appointed, if any, shall qualify and take office and serve exactly as if elected at a municipal election for the office. If, by the 75th day before the municipal election, no person has been appointed to the office(s) pursuant to (1) or (2) above, the election shall be held for such office(s).

If the City Council makes an appointment pursuant to Section 10229 of the Elections Code, the City Clerk shall not accept for filing any statement of write in candidacy which is submitted after the appointment is made.

Dated: August 17, 2022  
David Carnahan  
City Clerk, City of Sunnyvale

**SJMN #6691534; August 17, 2022**



**State of California**

**ELECTIONS CODE**

**Section 10229**

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10229. (a) If, by the 88th day, during normal business hours as posted, prior to the day fixed for a regularly scheduled municipal election or the 83rd day before the election, during normal business hours as posted, if an incumbent fails to file pursuant to Section 10225, (i) no one or only one person has been nominated for any office that is elected on a citywide basis, or (ii) no one or only one person is nominated to be elected from or by a legislative district, or (iii) in the case of any office or offices to be elected at large, the number of persons who have been nominated for those offices does not exceed the number to be filled at that election; or, if, by the 88th day, during normal business hours as posted, before a municipal election to fill any vacancy in office, no one or only one person has been nominated for any elective office to be filled at that election, and the election is subject to Section 36512 of the Government Code, the city elections official shall submit a certificate of these facts to the governing body of the city and inform the governing body of the city that it may, at a regular or special meeting held before the municipal election, adopt one of the following courses of action:

- (1) Appoint to the office the person who has been nominated.
- (2) Appoint to the office an eligible elector if no one has been nominated.
- (3) Hold the election, if either no one or only one person has been nominated. The city elections official shall publish a notice of the facts described in this section and the courses of action available under this subdivision. Publication shall be made pursuant to Section 6061 of the Government Code in any newspaper of general circulation as designated by the city elections official.

After the fifth day following the date of posting or publication, the governing body of the city may make the appointment or direct an election to be held in the affected territory. The person appointed, if any, shall qualify and take office and serve exactly as if elected at a municipal election for the office.

Notwithstanding Section 10403, if, by the 75th day before the municipal election, no person has been appointed to office pursuant to paragraph (1) or (2), the election shall be held.

(b) Subdivision (a) shall not apply if, at the regularly scheduled municipal election, more than one person has been nominated to another city office to be elected on a citywide basis or a city measure has qualified and is to be submitted to the voters at that municipal election.

(c) Notwithstanding Chapter 1 (commencing with Section 8600) of Part 3 of Division 8, or any other provision of the law to the contrary, if the governing body of a city makes an appointment pursuant to subdivision (a), the elections official shall

not accept for filing any statement of write-in candidacy that is submitted after the appointment is made.

(d) Nothing in this section shall be construed to prevent a city from enacting an ordinance pursuant to Section 36512 of the Government Code, requiring that a special election be held, or from enacting an ordinance pursuant to Section 36512 of the Government Code, providing that a person appointed to fill a vacancy on the city council shall hold office only until the date of the special election, or both. Any ordinance or ordinances may allow for appointment consistent with subdivision (a) without requiring or providing for a special election.

If an appointment to office is made in a particular legislative district pursuant to subdivision (a), that appointment shall not affect the conduct of the municipal election in other legislative districts of the city.

(Amended by Stats. 2009, Ch. 549, Sec. 3. (AB 1574) Effective January 1, 2010.)

**CITY OF SUNNYVALE  
NOTICE OF CITY CLERK'S CERTIFICATION THAT THERE ARE NOT MORE  
CANDIDATES THAN OFFICES TO BE ELECTED**

NOTICE IS HEREBY GIVEN, pursuant to [Section 10229 of the Elections Code](#) of the State of California, to the following facts relating to the general municipal election to be held on Tuesday, November 8, 2022:

As of the close of the nomination period on August 12, 2022 for the election of one (1) Member of the Councilmember District No. 1 of said City for the full term of four (4) years, there are not more candidates than offices to be elected.

The person so nominated is:

**Linda Sell**  
Mother / Engineer

That Section 10229 of the Elections Code allows one of the following courses of action to be taken by the City Council:

1. Appoint to the office the person who has been nominated.
2. Appoint to the office any eligible voter if no one has been nominated.
3. Hold the election if either no one or only one person has been nominated.

On August 22, 2022, the City Council will meet to either make the appointment or direct an election to be held. The person appointed, if any, shall qualify and take office and serve exactly as if elected at a municipal election for the office. If, by the 75th day before the municipal election, no person has been appointed to the office(s) pursuant to (1) or (2) above, the election shall be held for such office(s).

If the City Council makes an appointment pursuant to Section 10229 of the Elections Code, the City Clerk shall not accept for filing any statement of write in candidacy which is submitted after the appointment is made.



Dated: August 12, 2022  
David Carnahan  
City Clerk, City of Sunnyvale

COUNCIL POLICY MANUAL

**Policy 7.3.11 Seating Arrangements/City Council**

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**POLICY PURPOSE:**

Section 613 of the Charter provides that the City Council shall establish rules for the conduct of its proceedings. It is the purpose of this policy to establish a process to determine the seating arrangement of Councilmembers at Council meetings.

**POLICY STATEMENT:**

1. Seating of Mayor

The Mayor shall be seated in the center seat. Should the Mayor be absent, the Vice Mayor will assume the Mayor's seat.

2. Seating of the Vice Mayor

The Vice Mayor shall be seated to either side of the Mayor, with the vice Mayor receiving preference for obtaining the seat.

3. Councilmember Seating

A. When Determined: Seating arrangements will be determined as the last item of business at a meeting during which a mayor and/or vice mayor is selected.

B. How Determined: Councilmembers shall select where they wish to sit on the basis of length of continuous time of service on the City Council. The selection process shall be in the order of most senior to least senior. When two or more Councilmembers have equivalent time of service, those Councilmembers shall be given priority in seat selection by the highest number of votes in his/her most recent election.

(Adopted: RTC 81-602 (10/6/1981); Amended: 84-673 (11/6/1984), 85-554 (11/12/1985), 87-590 (11/10/1987), 88-701 (11/29/1988), 89-729 (11/14/1989), 91-522 (11/12/1991), 05-357 (11/29/05))

Lead Department: Office of the City Manager