



City of Sunnyvale

Notice and Agenda

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

ROLL CALL

ORAL COMMUNICATIONS

This category provides an opportunity for members of the public to address the committee on items not listed on the agenda and is limited to 15 minutes (may be extended or continued after the general business section of the agenda at the discretion of the Chair) with a maximum of up to three minutes per speaker. Please note the Brown Act (Open Meeting Law) does not allow committee members to take action on an item not listed on the agenda. If you wish to address the committee, please complete a speaker card and give it to the City Clerk. Individuals are limited to one appearance during this section.

CONSENT CALENDAR

All matters listed on the consent calendar are considered to be routine and will be acted upon by one motion. There will be no separate discussion of these items. If a member of the public would like a consent calendar item pulled and discussed separately, please submit a speaker card to the City Clerk prior to the start of the meeting or before approval of the consent calendar.

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

Recommendation: Approve Charter Review Committee Meeting Minutes of March 8, 2018 as submitted.

GENERAL BUSINESS

If you wish to speak to a general business item, please fill out a speaker card and give it to the City Clerk. You will be recognized at the time the item is being considered by the committee. Each speaker is limited to a maximum of three

minutes.

- 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.

Recommendation: Staff makes no recommendation.

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

Recommendation: Review Draft Report to the City Council on Charter Review Committee Recommendations for Amending Charter Section 604.

ADJOURNMENT

NOTICE TO THE PUBLIC

Any agenda related writings or documents distributed to members of the Charter Review Committee 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, Sunnyvale, California during normal business hours and in the West Conference Room on the evening of the meeting, pursuant to Government Code §54957.5. Please contact the Office of the City Clerk at (408) 730-7483 for specific questions regarding the agenda.

Pursuant to the Americans with Disabilities Act, if you need special assistance in this meeting, please contact the Office of the City Clerk at (408) 730-7483. Notification of 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.160 (b)(1))



City of Sunnyvale

Agenda Item

18-0233

Agenda Date: 4/12/2018

SUBJECT

Approve Charter Review Committee Meeting Minutes of March 8, 2018

RECOMMENDATION

Approve Charter Review Committee Meeting Minutes of March 8, 2018 as submitted.



City of Sunnyvale

Meeting Minutes - Draft

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 Ketzel, 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, Ketzel, 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 Ketzel, 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 Ketzel, 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, Ketzel, 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, Ketzel, 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

Agenda Item

18-0345

Agenda Date: 4/12/2018

SUBJECT

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.

Staff makes no recommendation.



City of Sunnyvale

Agenda Item

18-0344

Agenda Date: 4/12/2018

REPORT TO CHARTER REVIEW COMMITTEE

SUBJECT

Review and Discussion of Draft Report to the City Council on Charter Review Committee Recommendations for Amending Charter Section 604

DISCUSSION

At the March 22, 2018 meeting, the Charter Review Committee (CRC) approved a proposed draft amendment to Charter section 604 and designated a subcommittee to draft a report explaining the CRC's recommendation to the City Council. A draft of that report is attached for discussion by the CRC.

PUBLIC CONTACT

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

RECOMMENDATION

Review Draft Report to the City Council on Charter Review Committee Recommendations for Amending Charter Section 604.

Prepared and Approved by: Melissa C. Tronquet, Assistant City Attorney

ATTACHMENT

1. 2018 CRC Recommendation - Working Draft 4-9-18

May [], 2018

SUBJECT: 2018 CHARTER REVIEW COMMITTEE FINAL REPORT AND COUNCIL DIRECTION ON CHARTER AMENDMENT

REPORT IN BRIEF

The Sunnyvale City Charter ("Charter") is the "constitution" for the City of Sunnyvale ("City") and provides the legal guidelines for the form and function of its government. First adopted by the voters in 1949, the Charter requires periodic review to determine if any changes are advisable. In December 2017, the Sunnyvale City Council ("Council") approved the formation of a Charter Review Committee ("Committee") to analyze and propose alternatives for amending Charter Section 604 (Filling Vacancies in Council Seats). The City last convened a Charter Review Committee in 2011.

The Council, in December 2017, appointed eleven members to the Committee. The Committee first convened on January 11 and met [eight] times over the next [four] months.¹ The Committee invited and received email comments and held a public hearing to provide opportunity for public input and comment on the Charter issues it was considering. The Committee completed its review and recommendations for the issues identified by the Council. The Committee will be presenting its Final Report and Recommendation ("Report") to the Council tonight, and the chairman of the Committee and Committee members will be present to answer any questions the Council may have.

After receiving the Report, the Council will provide direction to staff on which of the Committee's recommendations the Council would like to place on the November 2018, or subsequent ballot. After receiving that direction, staff will begin the drafting of the appropriate ballot measures and resolutions and return to Council for the approval of the Charter ballot measures and consolidation with the November 2018, or subsequent election.

BACKGROUND

Cities in California are either "general law" or "charter" cities. General law cities have only those powers granted by state statute to cities. Article XI of the California Constitution authorizes the adoption of a city charter by the majority vote of a city's electorate. If adopted, the charter serves as the city's constitution and a blueprint for city government and ordinances. A city charter includes guidelines for the city's form of government, city council terms and districts, election and campaign procedures, and city departments.

The City adopted its Charter in 1949, and it has been amended fourteen times since its adoption. Charter amendments are usually to make changes to the structure of city government or to make "housekeeping" changes to update the charter to conform to changes in state law or experience in administering the charter provisions.

The California Constitution establishes the requirements for both adoption and amendment of a city charter. The City's Charter can be amended by initiative, a formal

¹ Note to City Staff: Please update once meetings have concluded.

charter review commission, or by Council action to place Charter amendments on the ballot. The Council can, by a majority vote, place proposed Charter changes on the ballot for voter approval. The Council appointed the Committee to assist the Council in reviewing Charter provisions on filling vacancies in Council seats, and to make recommendations to the Council on what Charter amendments to place on the ballot. The Committee does not have the legal authority of a charter review commission elected by the voters to independently place measures on the ballot and serves as an advisory body to the Council. The membership of the Committee is listed in the Report (Attachment 1).

The Committee met [eight] times between January 2018 and [April 2018] to review, discuss and vote on recommendations for the Charter.² Each meeting involved spirited and thorough discussion of both sides of the Charter issues and multiple viewpoints were expressed and debated for all Charter amendments. [Each meeting of the Committee]³ was a noticed public hearing, and members of the public attended and commented on the Charter issues.

EXISTING POLICY

The City's existing Charter policies are established by the current Charter. If Charter amendments are placed on the ballot and approved by a majority of the voters, the City policies would be set by the new Charter language for each of the amended Charter sections.

DISCUSSION

Detailed discussion of the Charter issues and the Committee recommendations are in the Report attached to this RTC as Attachment 1, and the recommendations will be presented to the Council by the Committee.

After receipt of the Committee's Report, the Council's next action at the May []⁴ meeting will be to determine which, if any, of the Committee's recommended changes to the Charter it wants to place on the ballot. Measures can be placed on the November 2018 ballot or subsequent ballots, or the Council may decide not to place any measures on the ballot at this time. After the Council provides direction to staff on which of the recommendations it wants to place on the ballot, the next step would be the drafting of the resolution and ballot language placing the Charter amendments on the ballot for forwarding to the Registrar of Voters. The resolutions and ballot measures need to be filed with the Registrar of Voters no later than [], 2018.⁵ We would anticipate bringing the resolution and ballot measures to the Council for adoption in June to ensure that all deadlines are met.

² Note to City Staff: Please update once meetings have concluded.

³ Note to City Staff: Please confirm.

⁴ Note to City Staff: Please update.

⁵ Note to City Staff: Please update.

The issue presented in the Committee's Report is as follows:

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

FISCAL IMPACT

To date the cost of providing staffing and support to the Committee is approximately \$[].⁶ This includes [] hours for the City Attorney, [] hours for the Assistant City Attorney, [] hours for the City Clerk, [] hours for the City Manager, and [] hours for other City staff.⁷

The future fiscal impact will be the cost of placing Charter measures on the ballot. The current estimate for the 2018 election is \$[].⁸

If the Charter amendment on filling vacancies is approved by the voters, there will be potential future cost savings if [].⁹

CONCLUSION

The eleven-member Committee appointed by the Council met from January 2019 through [April] 2018,¹⁰ and diligently and thoroughly reviewed the Charter issues assigned by the Council. The Committee is presenting its Charter recommendations to the Council tonight.

After receiving the Report, the Council's next action is to accept, reject, or modify the Committee's Charter recommendations and provide direction to staff on whether Charter amendment should be placed on the ballot.

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 Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site].¹¹

ALTERNATIVES¹²

1. Accept Report from the Committee.

⁶ Note to City Staff: Please provide bracketed information.

⁷ Note to City Staff: Please provide bracketed information.

⁸ Note to City Staff: Please provide bracketed information.

⁹ Note to Subcommittee: To be discussed – To what extent can we provide information on future cost savings? I don't think we discuss a certain amount, but perhaps given an example comparison of costs for the special election versus the costs for a consolidated election.

¹⁰ Note to City Staff: Please update once meetings conclude.

¹¹ Note to City Staff: Please confirm that this list of accurate and complete.

¹² Note to City Staff: Please update accordingly.

2. Accept the Committee recommendation and direct City staff to place the Committee proposed ballot language below on the November 2018 (or a subsequent) ballot for submission to the Sunnyvale electorate, or reject the Committee recommendation for a Charter amendment.

a. Change to Section 604 of the Charter (Filling Vacancies in Council Seats):

The Committee, by a [11-0] vote, recommends changing the current Charter Section 604 to the proposed language recommended by the Committee in Attachment 2.

- i. Accept_____
 - ii. Accept with Modifications_____
 - iii. Reject_____
3. Do not direct City staff to place the Committee proposed ballot language below on the November 2018 (or a subsequent) ballot for submission to the Sunnyvale electorate.

RECOMMENDATION

Staff's recommendation is that the Council accept and review the Report from the Committee and provide direction to staff on whether the Committee recommendation is approved, approved with modifications, or rejected. Staff is not making any other recommendations on the Charter amendments.

Prepared by:

John Nagel, City Attorney
City Attorney's Office

Attachments

Attachment 1	2011 Charter Review Committee Final Report and Recommendations
Attachment 2	Proposed Amendment to Section 604 (Filling of Vacancies in Council Seats)
Attachment 3	Current Section 604 (Filling of Vacancies in Council Seats)
Attachment 4	2018 Charter Review Committee Meeting Minutes
Attachment 5	Election Cycle Example

CITY OF SUNNYVALE

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**2018
CHARTER REVIEW COMMITTEE**

Final Report and Recommendations

Dated May , 2018

¹³ Note to City Staff: Please insert new Sunnyvale logo.

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 4.

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 Ketzel
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 []¹⁴ 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

¹⁴ Note to City Staff: Please update.

The Committee provided notice and an agenda for its meetings as required by the Brown Act. [In addition, the Committee sought input from the public beyond the minimum requirements of the Brown Act and the Committee held each meeting as a public hearing].¹⁵

Structure of Recommendations

The Committee studied the one issue in their charge from the Council. The issue is as follows:

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

COMMITTEE RECOMMENDATIONS

1. Introduction to the Committee's Recommendation

[]

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, by a 11-0 vote, recommends [].

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. Had Whittum resigned [nine]¹⁶ days later, the City would have been able to consolidate the special municipal election with the November general election. However, Charter Section 604 required the City to call a special election that August, which cost \$799,742 and had a voter turnout of only 23%. The special election filled Seat 4 for four months. In November, Seat 4 was up for reelection, which cost 452,158 and had a voter turnout of 67%.¹⁷ Larry Klein (now Vice Mayor) won both elections.

3. 1975 Adoption of Current Charter Language

¹⁵ Note to City Staff: Please confirm. Is there any other information we should include here?

¹⁶ Note to City Staff: Please confirm.

¹⁷ The turnout for the general election was 85%, but only 67% of voters voted on Seat 4. 28,597 more City voters participated in the November general election for Seat 4 than in the stand-alone special election in August.

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 councilmember 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, which was estimated to cost taxpayers \$25,000 in 1975, which would be \$111,000 as adjusted for inflation in 2016. However, voters ultimately passed the 1975 initiative by 51% in November 4, 1975.

4. Current Charter Language (Section 604)

Under the current requirements for filling a vacancy, 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 the election.¹⁸ This requires a vacancy to occur within two narrow timeframes in a two-year election cycle in order for

¹⁸ See Election Code Sections 10220 and 10407.

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 5, 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 or 74% of the time will result in a standalone special election.

Given the Charter's current language in relation to the California Elections Code, it standalone special election is likely to occur 74% of the time when there is a vacancy. To date, 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. For the most recent special election in 2016, the August standalone election cost the City \$799,742.

5. 1975 and Now: Changing from Odd- to Even-Years for Municipal Elections

The City held regular municipal elections in odd-years through 2013, when 72% of City voters approved a Charter amendment switching City elections to even-years. The City proposed the measure to save money on elections. The City's election costs 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.

In addition to cost savings, switching to even-year elections also increased voter participation. 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 an average of about 66% voted in Council races. Even though not all City voters voted on Council elections or other local matters, voter participation in Council races increased by over 30% in 2016. That translates into roughly 19,000 more City voters voting to elect Council members in 2016, relative to the previous odd-year elections.

The differences are greater when comparing regular Council elections with a stand-alone special election to fill a vacant Council seat. In 2016, the difference in voter participation between the August standalone special election for Seat 4 and the November regular election for that seat was 44%, with 28,507 fewer voters casting a ballot for Seat 4 in August than in November.

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

- Consolidated with a November even-year election (statewide and municipal general elections) – lowest cost and highest voter turnout
- Consolidated with a June even-year election (statewide primary election) – lower cost and higher voter turnout
- Stand-alone special election – highest cost and lowest voter turnout

In addition to the examples discussed above, there are other regularly scheduled elections in which consolidation could occur. For example, in March 2020

there will be a separate statewide presidential primary election and in May 2009 there was a special statewide election. However, various factors may impact voter turnout and the cost for the consolidation would likely rank somewhere between the highest and lowest costs for holding the election.

Although there are other considerations, cost and voter turnout weigh in favor of consolidating a special election with a regularly scheduled election to fill a Council vacancy. However, the current Charter requires a prompt, stand-alone special election to fill most vacancies, which is the most likely scenario given that regular City elections are now held in even-years and there are no elections in odd-years with which to consolidate.

6. Cost Savings And Fiscal Impact

The Committee's proposed Charter amendment aims to reduce the likelihood of the City holding standalone special elections, which the Committee's believes will save the City and the candidates running for election money.

Reducing the likelihood of holding standalone special elections will result in cost savings for the City. Excluding internal administrative costs, a standalone special election currently costs approximately \$800,000 to \$1,300,000. 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. Based upon 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 cost for a standalone special election is high in comparison to 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.

In addition to cost savings for the City, the Committee anticipates that amending the Charter to reduce the likelihood of holding standalone special elections will result in cost savings for candidates running for open Council seats. Candidates are unlikely to have to run for election twice in a given year. In 2016, candidates campaigned in August 2016 to fill the Council vacancy for a partial four-month term in the 2016 special election and immediately ran a subsequent campaign in the 2016 general election to fill the same Seat 4 months later. Because the likelihood of the City filling Council vacancies through a standalone special election is lower under the Committee's proposal, candidates are unlikely to incur duplicate election costs.

7. Committee Considerations and Process

This Committee had many lively and thoughtful discussions about the pros and cons of the options of appointment, special election, or a 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.

The Committee actively debated the appointment component of the hybrid solution. Since Section 605 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 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 approach to filling vacancies. After extensive debate, the Committee voted [11-0]¹⁹ for changing Section 604 of the Charter as recommended in Attachment 2. The rationale of the Committee for each section is set forth below.

¹⁹ Note to City Staff: To be updated.

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 Section 4 of 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(a)(6) of Article II of the California Constitution covers disqualification in instances of mental competency and imprisonment or parole for conviction of a felony.</p>
<p>(b) In the event of a vacancy in the 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>

<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 council members, 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 an <u>involuntary</u> vacancy with a short unexpired term by appointment. 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 (e) 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 regularly scheduled 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>(d+) The 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> <p>The Committee believes that the citizens of the City will want to understand the appointment process when voting upon the Charter amendment. Therefore, the Committee highly recommends that the Council adopt an ordinance establishing an appointment process prior to amending the Charter.²⁰</p>
<p>(e) 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 candidate Charter to account for the candidate filing period to begin 114 days prior to an election; and• 60 days to provide flexibility for scheduling an election or consolidating with an existing election.

²⁰ Note to Draft: To be discussed during next Committee meeting.

	<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>
<p>(f) 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>Capping the number of appointees on the Council at two 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.²¹ 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 when voting upon a Charter amendment that gives the Council the power to fill vacancies by appointment. 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 during an appointment.

²¹ Note to City Attorney: Are there any other temporary appointments under federal law, other than military service?

Several other Bay Area city charters that include an appointment process include processes that emphasize openness and transparency. These include:²²

- City of Cupertino: []
- City of East Palo Alto: []
- City of Gilroy: []
- City of Milpitas: []
- City of Morgan Hill: []
- City of Mountain View: []
- City of Palo Alto: []
- City of San Jose: []
- City of Santa Clara: []

We recommend an open and transparent appointment process that includes the following characteristics:²³

- 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

[To be provided: Charter flow chart of process and examples to highlight flexibility and pressure points.]

11. Conclusion

The Committee, by a 11-0 vote, recommends [].

[]

²² Note to City Staff: Do you have copies of these cities' appointment process policies or ordinances?

²³ Note to Draft: To be updated to include recommendations from Committee discussion.

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 Ketzel

Richard Mehlinger

Amanda Richey

Jack Walker

ATTACHMENT 2

Proposed Amendment to Section 604 (Filling of Vacancies in Council Seats)

(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 in the 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 council members, elect to fill the vacancy by appointment or by calling an election. The Council shall adopt an ordinance establishing a public process for appointment.

(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) 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.

(f) 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 3

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).

Attachment 4

2018 Charter Review Committee Meeting Minutes

Attachment 5

Election Cycle Example