DRAFT 8/12/22_____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE AMENDING CHAPTER 2.30 (APPOINTMENT PROCESS TO FILL VACANCIES ON THE CITY COUNCIL) OF THE SUNNYVALE MUNICIPAL CODE

WHEREAS, on November 6, 2018, City of Sunnyvale voters approved an amendment to section 604 of the City of Sunnyvale Charter, which addresses vacancies in City Council seats; and

WHEREAS, amended Charter section 606 allows the City Council to fill certain vacancies by appointment until the next general election or special municipal election consolidated with a statewide election; and

WHEREAS, pursuant to Charter section 606(e), the City Council adopted an ordinance establishing a public process for appointment, codified in Chapter 2.30 of the Sunnyvale Municipal Code; and

WHEREAS, the City Council wishes to amend Chapter 2.30 of the Sunnyvale Municipal Code to make administrative updates and change the voting process for appointing a City Council member when a vacancy occurs.

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

SECTION 1. Chapter 2.30 (Appointment Process to Fill Vacancies on the City Council) of Title 2 (Administration and Personnel) of the Sunnyvale Municipal Code is hereby amended to read as follows:

Chapter 2.30

APPOINTMENT PROCESS TO FILL VACANCIES ON THE CITY COUNCIL

2.30.010.   **Purpose and Intent.**
2.30.020.   **Applicability.**
2.30.030.   **Public Process for City Council Appointments.**

2.30.010.   Purpose and Intent.
The purpose of this chapter is to implement the requirement of City of Sunnyvale Charter section 606(e) by establishing a public process for appointment to fill vacancies on the City Council when appointment is authorized by the City Charter.

2.30.020.   Applicability.

This chapter applies to appointments permitted under Charter Section 606 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 606. To the extent there is any conflict between the Charter and this chapter, the terms of the Charter shall govern.

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 and Requirements. 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. Applications shall require each candidate for mayor to submit signatures supporting the candidacy from at least 20 registered voters in the city and each council district candidate to submit signatures supporting the candidacy from at least 20 registered voters in the applicable district. The City Clerk shall deem any application that does not include the requisite number of qualified signatures incomplete. Candidates who fail to submit complete applications by the deadline shall be deemed ineligible for consideration.

(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 City 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 City 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 City 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.~~ The Mayor shall announce each candidate's name. City Council will vote on each

candidate, and each councilmember may vote in support of more than one candidate.

(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.~~ The candidate receiving the most affirmative votes and at least four affirmative votes will be appointed. If no candidate receives the most votes and at least four affirmative votes, Council may continue with subsequent motions, which may include but are not limited to completing the process described in subsection (f)(1) again, or other motions at the Council's discretion. For example, in the event of a tie between candidates receiving the most affirmative votes, a motion could be made for a vote only on the tied candidates.

(3)   At any point after the first round of voting on the entire candidate pool as provided in subsection (f)(1), four or more councilmembers may vote to initiate the following impasse-breaker process:

i.   Using the most recent vote on the entire candidate pool (the "qualifying vote"), the City Clerk will prepare a drawing with the names of all candidates who received the most and second most affirmative votes. The drawing shall be proportional based on the number of affirmative votes the candidate received in the qualifying vote. For example, in the case of a qualifying vote consisting of eight candidates, if candidate A receives two votes, candidate B receives three votes, candidate C receives three votes and the remaining candidates receive zero votes, the drawing will be between candidates A, B and C, with candidate A receiving two entries in the drawing and candidates B and C each receiving three entries in the drawing.

ii.   The mayor will ask the City Attorney to pull a name from the City Clerk's drawing.

      iii.   If the candidate drawn by the City Attorney received four or more votes in the qualifying vote, that person shall be declared appointed to fill the vacancy.

      iv.   If the candidate drawn by the City Attorney received fewer than four votes in the qualifying vote, the Mayor shall call for a vote to confirm the candidate as the appointee. If the candidate does not receive four or more confirming votes, the candidate is not appointed. The City Attorney will then draw a new name and the process described in this section may continue until a candidate is declared appointed, all names have been drawn, or a motion to continue appointment efforts using alternate provisions of this section is made and approved by a majority of members, whichever occurs first.

(4) It is the intent of the City Council that the provisions of this Chapter be construed to allow the Council every opportunity to make an appointment up to the deadline for such action provided in Charter section 606.

~~(3)~~(5)   Any appointment requires at least four affirmative votes pursuant to Charter section 606(c).

SECTION 2. CEQA - EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment.

SECTION 3. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 5. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on _____, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:
RECUSAL:

ATTEST: APPROVED:

_____   _____
        City Clerk   Mayor
(SEAL)

APPROVED AS TO FORM:

_____
        City Attorney