



City of Sunnyvale

Agenda Item-No Attachments (PDF)

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REPORT TO COUNCIL

SUBJECT

Direction on Potential Charter Amendments to Revise Sections 604 (Filling Vacancies in Council Seats) and 606 (Designation of Vice Mayor) (Study Issue)

REPORT IN BRIEF

At the January 10, 2017, Annual Public Hearing for Discussion of Potential Council Study Issues, Councilmember Klein sponsored a study issue to “close the loophole in the City Charter regarding special elections” relating to Council vacancies. All Councilmembers co-sponsored the study issue. At the February 17, 2017, *Study Issues and Budget Issues Workshop*, the Council ranked Study Issue OCM 17-02 (Evaluate Proposing a Charter Amendment to Revise Section 604 regarding Filling Vacant Council Seats by Special Election) number 1 for the Office of the City Manager.

The scope of the Charter Amendment Study Issue was also expanded at the request of staff to include a correction of a technical defect in Charter Section 606 regarding the designation of a Vice Mayor. An amendment is needed to bring this Charter section into conformity with the recent change in general municipal elections from odd-numbered years to even-numbered years.

This report provides information regarding the charter amendment process and the options for the Council to determine proposed amendments to submit to the voters. The study of Charter section 604 evaluates the current requirements of the Charter regarding the filling of a Council vacancy and outlines possible options for revising that section to provide fiscally responsible alternatives for filling vacancies.

BACKGROUND

Sunnyvale City Charter Section 604 provides requirements for filling a vacancy in the City Council. When an unscheduled vacancy occurs on Council, the vacancy must be filled by holding a special election. Under very limited circumstances, the Council may fill an unexpired term by appointment. When the special election cannot be consolidated with a General Municipal Election, the City must conduct a “stand-alone” special election.

On April 4, 2016, a member of the City Council resigned prior to the end of his term. Due to the provisions of Charter Section 604, and the timing of the resignation, there was no other option for the Council than to call a special election to fill the vacancy for the unexpired term of approximately nine months. The special election was conducted as a “stand-alone” election on August 16, 2016, resulting in a partial term served of less than four months. The mandated special election in August had to be held on a date when no other city or regional elections were scheduled to be held, therefore, the City of Sunnyvale was responsible for the full cost of the election. Excluding internal administrative costs, the special election cost the City approximately \$800,000. A regular General Municipal Election would typically cost in the range of \$300,000 to \$400,000 in total, with the cost for

each Council seat ranging from \$33,040 to \$53,383 based on the two most recent General Municipal Elections.

EXISTING POLICY

Charter Section 604. Vacancies.

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.

Charter Section 606. Vice Mayor

At the first regular meeting in January, at which the City Council shall certify the election results, following each General Municipal Election, and the first regular meeting in January in odd-numbered years, the City Council shall also designate one of its members as Vice Mayor. The Vice Mayor shall perform the duties of the Mayor during his/her absence or disability.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within 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

1. Brief History of Charter provisions and election history relating to Council Vacancies

Charter Amendments relating to Council Vacancies were approved by the voters and effective December 31, 1975, December 21, 1976, December 23, 1982, and January 17, 1992.

1968 City Charter: allowed appointment for an unexpired term, or by election if the Council failed to fill the vacancy by appointment within 30 days:

Section 703. Vacancies: “A vacancy in the City Council from whatever cause arising, shall be filled by appointment by the City Council and the person appointed shall hold office for the unexpired term of the former incumbent. In the event the City Council shall fail to fill a vacancy by appointment within thirty days after such office shall have been declared vacant, it shall forthwith cause an election to be held to fill such vacancy.”

1975 voter-led initiative petition: This petition changed the vacancy process to require vacancies to be filled by election, except in the case of a death resulting in an unexpired term of six months or less:

“PROPOSITION D. Shall the Sunnyvale Charter be amended in the following ways: to limit Councilmembers to two successive elective four-year terms in addition to a period of up to two years that may be served in filling a vacancy; to require vacancies on the Council to be filled by election, except that the Council could fill a vacancy created by death where the unexpired term is six months or less; to specify conditions under which vacancies on the City Council shall occur?”

The genesis of this initiative appears to be a large number of vacancies and appointments at a single time, as the proponents of Proposition D provided the following argument:

“As of April 1975, four of the seven Council Members were originally appointed to the City Council. Elected, rather than appointed, Council Members are more responsive to the electorate. Filling vacancies by election, instead of appointment, will return the selection of Council Members to the people, where it properly belongs.”

Cost was raised as a major concern in the argument against Proposition D:

“Limiting the terms of the terms of Councilmen will take away the right of voters to decide whether or not to re-elect incumbents. Requiring special elections to fill Council vacancies will cost taxpayers \$25,000 each election at a time when soaring inflation calls for trimming city expenditures. More than 400 California General Law Cities fill their Council vacancies by appointment. Why does Sunnyvale have to be different?”

Proposition D was approved by the voters on November 4, 1975 with 51% voting yes. (Yes - 6,788; No - 6,455).

1976 Charter reorganization: A Council-sponsored initiative, Measure A, was approved by the voters to amend the Charter to rearrange the Sections of Articles VI, VII and VIII..., and other actions (Resolution 351-76; Yes - 25,937; No - 7,735). This resulted in recodifying Council Vacancies from Section 703 to Section 604. (Resolution No. 351-76; Yes - 22,520; No - 10,248).

1982 Amendment-Council Residency: Charter Section 604 was amended by the voters to include language requiring City Councilmembers to “maintain their principal place of residence within the City during their term of office.” (Resolution No. 297-82; Yes - 24,809, No - 7,163).

1991 Amendment-Vacancies following Involuntary Removal: Charter Section 604 was amended by the voters to include language to provide that “vacancies on the City Council shall be officially declared as such within thirty days of the commencement of the vacancy, that vacancies created by the involuntary removal of a Councilmember may be filled by appointment, and that no election shall be held the day before, day of, or day after a state holiday.” (Resolution No. 202-91; Yes - 10,435; No - 4,769).

Vacancy Election History: Four special elections to fill unscheduled vacancies in Council have been held on March 12, 1985, November 8, 1988, January 22, 1991, and August 16, 2016 (Resolution Nos 123-85, 222-88, 106-91, 829-16).

2. Summary and Discussion of the current requirements for filling of a Council Vacancy under Charter section 604:

Charter Section 604 “Vacancies” requires that within 30 days of the commencement of any vacancy:

- City Council shall officially declare the seat vacant, *and*
- Call a Special Municipal Election to fill the *unexpired term*.
 - The Special Municipal Election shall be held within 120 days from the date the Council declares the vacancy, *and*
 - The 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 the vacancy is declared.

The only exception to that process is that Council may appoint someone to a vacant position when:

- The vacancy was created by death or other involuntary removal of a member pursuant to California Constitution, Article II, Section 4; and
- The unexpired term does not exceed 180 days.
 - If these conditions are met, the City Council shall, within 60 days after such office has been declared vacant, fill such vacancy by appointment, *otherwise*;
 - If the City Council fails to fill the vacancy within the 60-day period, it shall treat the vacancy in the same manner as one created by a cause other than death or involuntary removal. (i.e., by Special Election)

Although the Charter provides that a “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 the vacancy is declared”, the California Elections Code modifies that date range in provisions requiring a nomination period which opens 113 days and closes 88 days before the elections (Election Code Sections 10220 and 10407). The Charter requirement for filling vacancies by special election, combined with the layer of Election Code requirements, results in smaller “windows” of time during which a vacancy could occur and the special election could be consolidated with a Statewide or General Municipal Election.

A vacancy would have to occur within a 56-day or a 138-day window totaling about **194 days** within a two-year election cycle to be consolidated with either the Statewide or General Municipal Election. In other words, under the current Charter Section 604 language, in a two-year election cycle, a vacancy that occurs outside those windows, about **536 days**, cannot be consolidated with a Statewide or

General Municipal Election.

3. Options for Amending Charter Section 604 to Minimize Potential Special Election Costs While Balancing the Public Interest in Directly Electing Council Members

As a charter city, Sunnyvale must conduct elections in the manner prescribed in its City Charter. However, state law and other city charters provide examples and options filling council vacancies. These options fall into three broad categories, discussed in more detail below:

- a. Fill vacancy by special election (Sunnyvale's current approach)
- b. Fill vacancy by appointment.
- c. Choice by Council to fill vacancy by appointment or call special election.

Where the council fills by appointment (options (b) and (c) above), common requirements include:

- appointments must be made by a majority of the full council
- appointment is effective only until the next general or special election, with member elected serving the remainder of the unexpired term.

California Government Code Section 36512 authorizes General Law cities to either fill the vacancy by appointment or call a special election to fill the vacancy. The special election shall be held on the next regularly established election date not less than 114 days from the call of the special election. A person appointed or elected to fill a vacancy holds office for the unexpired term of the former incumbent. However, Section 36512 also authorizes General Law cities to enact an ordinance to allow for certain variations, including Section 36512(c)(3) which provides "that a person appointed to fill a vacancy on the city council holds office only until the date of a special election which shall immediately be called to fill the remainder of the term. The special election may be held on the date of the next regularly established election or regularly scheduled municipal election to be held throughout the city not less than 114 days from the call of the special election."

A survey of other cities in the region finds most are using variations on the theme of California Government Code Sections 36512 and 36512(c)(3), allowing for Council to fill a vacancy either by appointment or by special election:

- Campbell - State law:
 - Vacancy filled as set forth in California Government Code Section 36512;
- Cupertino - Council option to appoint or set special election
 - Council *at its option* may either fill the vacancy for the unexpired term by appointment or call a special election, or may appoint to hold office only until the date of a special election to fill the remainder of the unexpired term;
- East Palo Alto - Appointment
 - Council fills vacancy for unexpired term by appointment only;
- Gilroy - Appointment until next general election
 - Council fills vacancy by appointment, to hold office until the next general municipal election; successor elected serves remainder of unexpired term;
- Milpitas - Appointment until next regularly scheduled election
 - Council fills vacancy by appointment, to hold office only until the date of a special election which shall be immediately called to fill the remainder of the vacant term; the special election date will be the date of the next regularly scheduled election to be held throughout the City;
- Morgan Hill - Appointment until next regularly scheduled election

- Council fills vacancy by appointment, to hold office only until the date of a special election to fill the remainder of the term; the special election may be held on the date of the next regularly scheduled municipal election;
- Mountain View - Appointment until next general election
 - Council fills vacancy *either* by appointment or calls a special election; if filled by appointment, the person appointed holds office until the next general municipal election, and the elected successor serves for the remainder of unexpired term;
- Palo Alto - Appointment until next general election
 - Council majority fills vacancy by appointment, to hold office until the next election at which council members are to be elected, at which a council member shall be elected to serve for the unexpired term;
- San Jose - Council option to appoint or set special election
 - Council fills vacancy *either* by appointment by majority of Council or by election; if filled by appointment, it is effective until end of unexpired term, or January 1st following the next Regular Municipal Election, whichever first occurs; if filled by election, it is for the entire unexpired term; San Jose also has a provision for an interim appointment to fill the office until a candidate has been duly elected;
- Santa Clara - Appointment
 - Council fills vacancy by appointment; if not filled within 30 days, an election is called; person appointed or elected holds office for the unexpired term.

4. Analysis of Charter Section 606 Issue- Designation of Vice Mayor

In January 2017, the scope of the Charter Amendment Study Issue was expanded at the request of staff to include a correction of a technical defect in Charter Section 606 regarding the designation of a Vice Mayor. An amendment is needed to bring this Charter section into conformity with the change in general municipal elections from odd-numbered years to even-numbered years.

Presently, Charter Section 606 reads:

At the first regular meeting in January, at which the City Council shall certify the election results, following each General Municipal Election, and the first regular meeting in January in odd-numbered years, the City Council shall also designate one of its members as Vice Mayor. The Vice Mayor shall perform the duties of the Mayor during his/her absence or disability.

On November 5, 2013, the voters approved a charter amendment to change the regular General Municipal Elections from odd-numbered years to even-numbered years. Prior to that time, during odd-number year elections, the Section 606 text above meant that the Vice Mayor would be selected in January in an even-numbered year following the odd-year election, and in January of an odd-numbered year, or, in other words every year in January for a one-year term. With the change from odd-year to even-year elections, the above text may be erroneously interpreted to state redundantly that the Vice Mayor is selected in January in odd-numbered years only. The voters in 2013 did not vote to change the term of the Vice Mayor.

To resolve this oversight, staff recommends the phrase “in January in odd-numbered years” be corrected to “in January every year.” This would retain the original intent of the Charter to provide for a one-year term for Vice Mayor rather than the unintended change of the meaning of this text to provide that the designation of a Vice Mayor occurs only in odd-numbered years.

5. Options for Charter Amendment Process

California Elections Code Section 9255 provides that a charter amendment may be proposed by one of the following methods:

- a) a charter commission, which may be either elected or appointed by the City Council;
- b) by the City Council on its own motion;
- c) by a petition signed by 15 percent of the registered voters of the City.

In addition to the methods provided for in the California Elections Code, the Sunnyvale City Council may appoint an ad hoc Charter Review Committee to assist the Council in reviewing the Charter and to make recommendations to the Council on what Charter amendments to place on the ballot. This ad hoc Charter Review Committee would not have the legal status or authority of a Charter Review Commission and would serve as an advisory body to the City Council. Charter amendments have been placed on the ballot by all three methods over the years. Most recently, for example, the Council proposed an amendment to change elections from odd to even numbered years on its own motion. More comprehensive reviews of multiple charter issues have been handled by committees.

Recent Charter Amendments and <i>ad hoc</i> Charter Review Committees in Sunnyvale	
1967	City Council appointed a citizen Charter Study Committee comprised of 35 registered Sunnyvale voters; each Councilmember submitted the names of five registered voters
1976	City Council appointed a Charter Study Committee comprised of 21 members; each Councilmember submitted the names of three voters
1982	City Council appointed a 15-member Charter Review Committee, with each Councilmember nominating two members and the 15 th member selected by the entire Council, for a comprehensive charter review
2006	City Council created an ad hoc Charter Review Committee comprised of 15 members for a comprehensive charter review; each Council member appointed two committee members, with the last member appointed by the Mayor and confirmed by Council
2010	City Council created an 11-member ad hoc Charter Review Committee to review two charter amendment proposals and make recommendations to the Council on issues including change to a directly-elected mayor, and council compensation
2013	City Council, on its own motion proposed a charter amendment to change from odd-year to even-year elections.

Council must take action in summer 2018 to place a measure on the November 2018 ballot to submit a Charter Amendment to the voters. Therefore, ideally before June 2018, Council should provide direction on whether to propose amendments to Charter Sections 604 and, and what the substance of those proposed amendments should be.

6. Decision Points and Next Steps

Staff has framed the following alternatives for the Council

Alternative 1- Direction to Staff: Provide direction to staff on the Council's preferred method proposal for filling council vacancies and to draft amendments to Charter sections 604 and/or 606 for consideration by Council and;

- a) Return to Council with draft alternatives for selection prior to June 2018;
- b) Return to Council in June 2018 with resolution(s) to call an election to submit a ballot measure to the voters November 6, 2018.

Alternative 2- Charter Review Committee:

- c) Create an ad hoc Charter Review Committee to analyze and propose alternatives for amending Charter sections 604 and 606, and provide direction on the structure and scope of that commission;
- d) Direct staff to return to Council with draft alternatives for selection prior to June 2018;
- e) Direct staff to return to Council in June 2018 with resolution(s) to call an election to submit a ballot measure to the voters November 6, 2018.

Alternative 3: Provide other direction related to Alternatives 1 or 2.

Alternative 4: Do not proceed with preparations for Charter Amendments to revise Charter Sections 604 and 606.

FISCAL IMPACT

If the Council chooses to provide direction to staff to prepare council-initiated charter amendments, staff time and costs will be minimal. The main cost will be to put the measure(s) on the ballot, estimated at \$75,000 per measure for the general election in 2018. If directed, staff will include the costs for the charter amendments in the FY 2018/19 Recommended Budget.

The total costs from the 2006 Ad Hoc Charter Review Committee were \$34,308. The costs for the 2010-2011 Ad Hoc Charter Review Committee included \$375 for recruitment advertising. Internal staff costs were included in the FY 2010/11 Budget and no staff overtime was required. If Council chooses to appoint a committee to review these issues, the costs for a 2017-2018 Ad Hoc Charter Review Committee will include recruitment advertising and internal staff costs. Although the work may potentially require staff overtime the cost can be absorbed within the FY 2017/18 Operating Budget for the City Manager's office through vacancy savings.

The cost of Alternative 4, make no changes in the Charter, presents a continuing potential for the necessity of calling a "stand-alone" special election whenever an unscheduled vacancy on Council occurs from whatever cause arising, except when created by the death or other involuntary removal of a member and the unexpired term does not exceed one hundred eighty days. The most recent estimate of the cost of a stand-alone special election ranged from approximately \$740,000 to \$1.3 million. The actual cost of the August 16, 2016 special election was \$799,742.

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 website.

ALTERNATIVES

1. Provide direction to staff on the Council's preferred method for filling council vacancies and to draft amendments to Charter sections 604 and/or 606 for consideration by Council and;
 - a) Return to Council with draft alternatives for selection prior to June 2018;
 - b) Return to Council in June 2018 with resolution(s) to call an election to submit a ballot measure to the voters November 6, 2018.
2. Create an ad hoc Charter Review Committee to analyze and propose alternatives for amending Charter sections 604 and 606, and provide direction on the structure and scope of that commission;
 - a) Direct staff to return to Council with draft alternatives for selection prior to June 2018;
 - b) Direct staff to return to Council in June 2018 with resolution(s) to call an election to submit a ballot measure to the voters November 6, 2018.
3. Provide other direction related to Alternatives 1 or 2.
4. Do not proceed with preparations for a Charter Amendments to revise Charter Sections 604 and 606.

STAFF RECOMMENDATION

Staff makes no recommendation.

Prepared by: Kathleen Franco Simmons, City Clerk

Reviewed by: John A. Nagel, City Attorney

Reviewed by: Walter C. Rossmann, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Study Issue Paper: OCM 17-02 Evaluate Proposing a Charter Amendment to Revise Section 604 regarding Filling Vacant Council Seats by Special Election
2. California Government Code Section 36512
3. Sample Ballot & Voter Information Pamphlet, November 4, 1975
4. Samples from other cities