



City of Sunnyvale

Agenda Item-No Attachments (PDF)

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REPORT TO COUNCIL

SUBJECT

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

BACKGROUND

Resignation

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

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

Charter Section 606

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

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

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

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

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

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

Sunnyvale Municipal Code Chapter 2.30

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

EXISTING POLICY

Sunnyvale Charter Section 606 (Vacancies) (Attachment 2)

Sunnyvale Municipal Code Chapter 2.30 (Appointment Process to Fill Vacancies on the City Council) (Attachment 3)

ENVIRONMENTAL REVIEW

The action being considered does not constitute a “project” with the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

DISCUSSION

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

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

Step Two: Consider Appointment or Election to Fill the Vacancy

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

Appointment Scenarios

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

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

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

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

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

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

Election-Only Scenarios

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

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

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

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

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

FISCAL IMPACT

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

PUBLIC CONTACT

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

ALTERNATIVES

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

STAFF RECOMMENDATION

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

Prepared by: David Carnahan, City Clerk

Reviewed by: Teri Silva, Assistant City Manager

Approved by: Kent Steffens, City Manager

ATTACHMENTS

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