



# City of Sunnyvale

## Agenda Item-No Attachments (PDF)

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### REPORT TO COUNCIL

#### **SUBJECT**

Appointment to Fill Vacancy in the At-Large City Council Seat No. 3 to a Term Ending January 3, 2023

#### **BACKGROUND**

Mason Fong, who was elected to City Council At-Large Seat No. 3 on November 6, 2018, and served a term to expire January 3, 2023, submitted a letter of resignation from the Council, effective November 14, 2021. Sunnyvale Charter (Charter) Section 606 governs the process of filling a vacancy on the Council, and Sunnyvale Municipal Code (SMC) Chapter 2.30 provides additional requirements that apply when the Council chooses to fill the vacancy by appointment.

The Council met on November 22, 2021, to discuss the options for filling the vacancy. On December 14, 2021, it unanimously declared At-Large Seat No. 3 vacant, declared its intention to fill the vacancy by appointment, and approved the public application and appointment process. The Council interviewed eligible candidates at public meetings on January 31 and February 2, 2022, and is scheduled to make the appointment on Tuesday, February 8, 2022. The Charter requires the Council to make an appointment or call a special election to fill the vacancy within 60 days of declaring the seat vacant, or no later than February 12, 2022.

The vacancy in the At-Large Seat No. 3 will be resolved through the next general municipal election, when the City will complete its transition to district-based Council elections. After the November 8, 2022 Election, At-Large Seat Nos. 1, 2 and 3 will cease to exist when candidates are sworn in to represent Council Districts 1, 3 and 5. The councilmember appointed to fill this vacancy will therefore serve only until the January 3, 2023 Council meeting when the new district council members are sworn in.

#### **EXISTING POLICY**

Sunnyvale Charter Section 603 (Qualifications) (Attachment 4)

Sunnyvale Charter Section 606 (Vacancies) (Attachment 5)

Sunnyvale Municipal Code Chapter 2.30 (Appointment Process to Fill Vacancies on the City Council) (Attachment 6)

#### **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**

### **1. Applications and Interviews of Candidates**

On January 31 and February 2, 2022, the City Council interviewed nine candidates for at-large Council Seat No. 3:

- Jennifer Britton
- Prashanth Channabasavaiah
- Sean Dechter
- James Gavney
- James Griffith
- Nupoor Kulkarni
- Richard Leshner
- Shantha Ranganathan
- Anthony Spitaleri

Prior to scheduling interviews, all Candidates submitted applications (Attachment 2) along with a Statement of Economic Interests-FPPC Form 700 (Attachment 3). The voter registration for each Candidate was confirmed with the Santa Clara County Registrar of Voters for compliance with the Charter Section 603 requirement that all Candidates are registered to vote in Sunnyvale 30 days before the February 8, 2022 date Council is scheduled to make this appointment (Attachment 4).

### **2. SMC Section 2.30.030 Requires Ranked Choice Voting for this Vacancy**

SMC Section 2.30.030(f)(2) provides the following ranked choice voting process when there are five or more candidates to fill a City Council vacancy:

*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.*

Because there are nine candidates for this vacancy, Council will use this method to make the appointment. The Charter requires four affirmative votes to make an appointment.

It may be helpful for the Council and public to keep in mind that Ranked Choice Voting (RCV) works

differently from the typical plurality voting used to elect councilmembers. RCV allows each councilmember to rank candidates in order of preference. To determine the winner, the candidate(s) with the fewest first-choice votes is eliminated, the voter's preferences are then reassigned to the next-choice candidate, first-choice rankings are tallied again, and the process of first-choice counting and vote reassignment continues until a single candidate has four first-choice rankings. Thus, the process focuses on the first-choice ranking and the priority orders chosen by the voting councilmembers, rather than the candidate who achieves the most total votes on a single ballot as in the City's typical elections.

### **3. Ranked Choice Voting Process for Vacancy Appointment**

#### *a. Discussion and Ranking*

Following public comment and Council discussion, each councilmember will vote by ranking all the candidates. Due to the telepresence nature of this meeting, Councilmembers will register their rankings via a random order roll call vote, which will be recorded by the City Clerk.

A few parameters apply for the rankings: (1) Councilmembers should only indicate one candidate for each rank (i.e., candidates may not be ranked as "tie" for any single rank); (2) As with any vote, Councilmembers may abstain by choosing not to rank any or all candidates; however, Councilmembers who choose not to rank all candidates are advised that if they do not rank all available candidates, the candidates they do rank might get excluded before the tabulation process is complete, resulting in what is referred to in RCV as "ballot exhaustion," meaning the voter's rankings cease to be considered when all their ranked candidates are eliminated. If several Councilmembers abstain from ranking all candidates and multiple ballots are exhausted, the ranked choice voting method may not lead to the necessary four votes to appoint a Councilmember.

#### *b. City Clerk Counts First-Choice Rankings*

Once all Councilmembers have ranked the candidates, the Mayor will call a recess for the City Clerk to count first-choice preferences. The Clerk will apply the following provisions from SMC section 2.30.030(f)(2):

- (1) If one candidate receives four or more first-choice votes, that candidate shall be declared to be appointed. Should one candidate receive four or more first-choice votes in any round of tabulation, the City Clerk would return from the recess and report that the candidate has received the number of votes necessary to be appointed.
- (2) If no candidate receives four or more first-choice votes, 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. For example, if candidate A receives 3 first-choice votes, Candidate B receives 2 first-choice votes, and Candidate C receives one first-choice vote, Candidate C will be eliminated from each councilmember's ranking and all the rankings reassigned such that each councilmember's next-choice candidate advances in the process.
- (3) 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. For example, if Candidates A and B receive 2 first-choice votes each, and Candidates C and D

receive 1 first-choice vote each, Candidates C and D will be eliminated. Each councilmember's rankings would be reassigned such that each councilmember's next-choice candidate advances in the process.

- (4) 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. For example, if candidates A, B and C each receive 2 first-choice votes, the City Clerk would then review how many second-choice votes Candidates A, B and C received. If Candidates A and B each received 2 second-choice votes, and Candidate C had 1 second-choice vote, Candidate C would be eliminated and all the rankings would be reassigned accordingly.
- (5) 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 City 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. For example, if candidates A, B and C each receive 2 first-choice votes, and 2 second-choice votes, the City Clerk would call for a tiebreaker vote in which each councilmember voted for one of the three candidates. If candidate A received 3 votes, candidate B received 2 votes, and Candidate C received 1 vote, Candidate C would be eliminated, and all the rankings would be reassigned accordingly.

SMC section 2.30.030(f)(2) requires the counting and vote reassignment process to continue until one candidate has at least four first-choice votes, at which point that candidate is declared to be appointed. Depending on how rankings are spread across the candidate pool, the process may require multiple rounds to reach the four-vote minimum. After each tabulation of first-choice votes, the City Clerk will return from recess to report eliminations and explain vote reassignments. The Mayor would then return the meeting to recess to allow the City Clerk to continue the ranked choice voting procedures.

*c. Special Circumstances- Ties for First-Choice, Ballot Exhaustion Preventing Four-First Choice Votes*

With only six councilmembers voting, two special circumstances are possible. First, a tie with two candidates receiving 3 votes each is possible. The provisions of SMC section 2.30.030 do not provide a tiebreaking or vote reassignment scenario for a 3-3 tie between two candidates, so the ranking would be declared a tie with no action taken by the Council to appoint a candidate to fill the vacancy. Second, as noted above, if abstentions from ranking lead to ballot exhaustion that results in an inability to achieve four first-choice votes, or for any other reason the process concludes without one candidate receiving four or more votes, the appointment cannot be made.

In any case in which the RCV process concludes without an appointment, the Council can choose to conduct additional rounds of ranked choice voting. If one or more Councilmembers adjust one or more of their rankings on subsequent rounds, the ranked choice voting outcome is likely to be different.

*d. No Appointment - Special Election Required*

If after one or more rounds of ranked choice voting, the City Council fails to make an appointment in the 60-day window following declaration of the vacancy, the Charter requires the City to hold a special election within 240 days of the date the vacancy is declared. In this case, the Council would need to call the special election by February 12, 2022, and the election would need to take place by August 11, 2022.

As discussed in the Reports to Council on November 22 and December 14, 2021, the timeline the Council selected for this appointment process now precludes the City from consolidating with another election, which typically helps reduce costs. Therefore, if the Council is unable to fill the vacancy by appointment, the election would be a special, standalone election with a high cost, estimated between \$1,937,773 and \$3,148,882.

In addition, there would be more time required after the election for certification of the results, so an elected candidate would likely assume office 30 to 45 days after the election date and serve until the vacant term ends on January 3, 2023.

**FISCAL IMPACT**

Making an appointment to the At-Large Council Seat No. 3 does not have a fiscal impact. If the City Council is unsuccessful in making an appointment to the At-Large Seat No. 3, the Charter requires the City to call a special election. The cost to conduct an election is estimated to be between \$1,937,773 and \$3,148,882, 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. Appoint a candidate to fill the vacancy in the At-Large Council Seat No. 3.
2. Direct staff to schedule a special Council meeting, no later than February 12, 2022, for the purpose of calling a special election to fill the vacancy in the At-Large Council Seat No. 3.
3. Other direction as provided by Council.

**STAFF RECOMMENDATION**

Staff makes no recommendation. This report is developed to allow Council to make an appointment to fill the vacancy in the At-Large Council Seat No. 3 or direct staff to schedule a special council meeting to call for a special election.

Prepared by: David Carnahan, City Clerk

Reviewed by: Teri Silva, Assistant City Manager

Approved by: Kent Steffens, City Manager

**ATTACHMENTS**

1. Summary of Candidates
2. Council Candidate Applications - Links
3. Council Candidate Statements of Economic Interests (FPPC Form 700) - Links

4. Sunnyvale Charter Section 603 (Qualifications)
5. Sunnyvale Charter Section 606 (Vacancies)
6. Sunnyvale Municipal Code Chapter 2.30 (Appointment Process to Fill Vacancies on the City Council)