



Council Meeting: March 4, 2008

SUBJECT: Ordinance Amending Sections of the Municipal Code Title II, Chapter 2.10, Allowing Use of the Internet as an Option for Publishing City Council Meeting Agendas, Digests of Actions, Ordinances and Legal Notices

REPORT IN BRIEF

On November 6, 2007 voters approved Charter Amendment (Measure K) which modified Sections 613, 703 and 708 of the Sunnyvale Municipal Code by allowing the City an option to publicize City Council agendas and the digest of actions on the Internet in lieu of local newspapers, and to utilize the official City Website for the publication of ordinances and legal notices to the extent allowed by law. This report recommends changes to the City's ordinance to be consistent with the amended Charter language.

BACKGROUND

Chapter 2.10 of the Municipal Code was specifically enacted pursuant to Sections 613, 703 and 708 of the Charter of the City of Sunnyvale to establish procedures for the designation of newspapers to be used for the publication of legal notices relating to City proceedings, the publication of City Council agendas and digests of actions, and the publication of City ordinances.

This section of the code, however, was established prior to the development of the Internet and the communication options it presents. On November 6, 2007, Sunnyvale voters approved Measure K, amending the City Charter to allow the City the option of publishing City Council agendas, digests of actions, legal notices and ordinances on the Internet to the extent permitted by law. This report recommends an amendment to City ordinance consistent with this voter-approved change to the City Charter.

EXISTING POLICY

Title 2, Chapter 2.10 of the Sunnyvale Municipal Code and amended City Charter Sections 613, 703 and 708.

DISCUSSION

City Charter

The new Charter language in Sections 613, 703 and 708, related to publication of agendas and minutes digests, as well as ordinances and legal notices, reads as follows:

Section 613: Proceedings. The City Clerk shall cause the publication, in a newspaper widely circulated within the City, or on a City Website accessible through Internet or other appropriate technology, of items listed on the agenda prepared for regular meetings of the City Council...”

Section 703: Ordinances. Publication. The City Clerk shall cause each ordinance to be published at least once within fifteen (15) days after its adoption in accordance with procedures established by ordinance of the City Council for publication of legal notices, or, as an alternative method of publication, the Council, in its discretion may order copies of any ordinance to be posted in three (3) prominent places in the City and posted to the City Website using Internet or other appropriate technology, together with a single publication of a notice setting forth the date of adoption, the title of the ordinance and a list of the places where copies of such ordinance are posted.

Section 708: Publishing of Legal Notices. The City Council shall adopt, by ordinance, procedures for the publication of notices or other matter required, by law, to be published: Such procedures shall comply with such requirements of law as are binding upon chartered cities and, consistent with such laws, shall be designed to provide reasonable public notice, taking into consideration factors including, but not limited to, the desire to provide widespread dissemination of public notice, schedule of publication to ensure currency of notice, cost, and convenience. Such procedures may include alternative means of giving legal notice, such as posting, including posting on the City Website using Internet or other appropriate technology, where publication is not feasible and where such alternative methods are permitted by law. Such procedures may provide that failure to comply with the procedures shall not invalidate any action taken. Any reference in this Charter or any other provision of law to publication in the official newspaper shall be deemed satisfied by publication in accordance with the procedures established by ordinance pursuant to this section.

City Ordinance

Current City ordinances do not provide the flexibility intended by the new Charter language cited above. Municipal Code Section 2.10.020, Designation of Official Newspaper for Publication of Legal Notices, currently directs that after a bidding process, a newspaper of general circulation within the city of Sunnyvale shall be selected and designated as the official newspaper for publication of notices. No option is currently provided for use of the Internet.

The recommended ordinance amendments to Title 2, Chapter 2.10 list Internet publication as an option for publication as well as newspaper publication. The process for designation of the newspaper to be used for publication will not change as outlined in the City's Municipal Code.

Effect on Operations

The passage of Measure K does not impose any mandates on the City. It merely provides the City an additional option (the Internet) with regard to the posting of Council agendas, digests of actions, ordinances and legal notices.

FISCAL IMPACT

The average cost of publication of the agenda or action digest in the San Jose Mercury News and the Sunnyvale Sun is \$300 per insertion. The average number of publications of agenda and minutes digests each year are sixty-eight. Staff anticipates a reduction in publication costs of approximately \$19,000 annually.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official notice bulletin board outside City Hall, in the Council Chambers lobby, in the Office of the City Clerk, at the Library, Senior Center, Community Center and Department of Public Safety; posting the agenda and report on the City's Web site; and making the report available at the Library and the Office of the City Clerk.

ALTERNATIVES

Alternative 1: Council adopts the ordinance amending Municipal Code Title 2, Chapter 2.10 Publication of Legal Notices, to include the option of Internet publication of agendas, the digest of actions, legal notices and ordinances as permitted by law.

Alternative 2: Do not adopt the ordinance amending Municipal Code Title 2, Chapter 2.10 Publication of Legal Notices, to include the option of Internet publication of agendas and the digest of actions, legal notices and ordinances as permitted by law.

RECOMMENDATION

Alternative 1: Staff recommends adoption of the ordinance amending Municipal Code Title 2, Chapter 2.10 Publication of Legal Notices, to include the option of Internet publication of agendas and the digest of actions, legal notices and ordinances as permitted by law. This action is required if the City's ordinances are to remain consistent with and supportive of the City Charter.

Reviewed by:

Robert Walker, Assistant City Manager, Office of the City Manager

Prepared by: Gail Borkowski, City Clerk

Approved by:

Amy Chan

City Manager

Attachments

A. Draft Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE AMENDING SECTIONS 2.10.010 (PURPOSE), 2.10.020 (DESIGNATION OF OFFICIAL NEWSPAPER FOR PUBLICATION OF LEGAL NOTICES), 2.10.030 (DESIGNATION OF NEWSPAPER FOR PUBLICATION OF CITY COUNCIL AGENDAS AND DIGESTS OF ACTIONS), AND 2.10.040 (PUBLICATION OF CAMPAIGN CONTRIBUTIONS) OF CHAPTER 2.10 (PUBLICATION OF LEGAL NOTICES) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE SUNNYVALE MUNICIPAL CODE PERTAINING TO PUBLICATION OF LEGAL NOTICES TO PROVIDE FOR POSTING ON CITY WEBSITE

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. SECTIONS 2.10.020, 2.10.020, 2.10.030, AND 2.10.040 AMENDED. Sections 2.10.010, 2.10.020, 2.10.030, and 2.10.040 of Chapter 2.10 of Title 2 of the Sunnyvale Municipal Code are hereby amended to read as follows:

2.10.010. Purpose.

This chapter is enacted pursuant to Sections 613 and 708 of the Charter of the City of Sunnyvale. The purpose of this chapter is to establish procedures for the designation of newspapers or the City Website to be used for the publication of legal notices relating to city proceedings and to the publication of city council agendas and digests of actions. This chapter is intended only to designate the appropriate newspapers or the City Website for publication of various legally required notices. Nothing contained herein shall be deemed to impose any requirement of publication not otherwise imposed by other provisions of law. Nor shall anything contained herein be construed to affect the otherwise required time, frequency, content or manner of notice.

2.10.020. Designation of official newspaper for publication of legal notices.

Prior to the beginning of each fiscal year a notice inviting bids shall be published and the city council shall contract for the publication of all legal notices or other matter, required by any provision of law to be published in a newspaper of general circulation within the City of Sunnyvale, during the ensuing fiscal year. The newspaper with which any such contract is made shall be designated as the official newspaper for the publication of such notices or other matter for the period of such contract. In no case shall the contract price charged for such publication exceed the customary rates charged by such newspaper for the publication of legal notices of a private character. The period of such contracts shall not exceed one year. Notwithstanding the foregoing, if it appears to the city council that the rates offered are unfair, it need not designate such newspaper the

official newspaper. Upon making a finding to such effect, or if publication of a newspaper which has been so designated is suspended, then legal notices, ordinances or other matter otherwise required to be published in the official newspaper may be published in any other newspaper which is a newspaper of general circulation within the City of Sunnyvale, or, if none, by posting copies thereof in at least three public places in the city and also posting a copy on the official City Website. The places for posting legal notices shall be fixed by ordinance of the city council.

No defect or irregularity in proceedings taken under this section, or failure to designate an official newspaper shall invalidate any publication where the same is otherwise in conformity with applicable provisions of law or ordinance.

2.10.030. Designation of newspaper or City Website for publication of city council agendas and digests of actions.

Prior to the beginning of each fiscal year, a notice inviting bids shall be published and the city council shall contract for the publication of city council agendas, digests of actions, or other material required to be published pursuant to Section 613 of the Charter of the City of Sunnyvale during the ensuing fiscal year. Such newspaper shall be published not less frequently than daily, Monday through Saturday, recognized holidays excepted, and shall have an average paid circulation within the city of Sunnyvale of not less than five thousand daily. The paid circulation of any newspaper may be determined by the city council based upon such evidence as may be available, including representations by the affected newspapers. Such newspaper shall be a newspaper of general circulation within either the City of Sunnyvale or the County of Santa Clara. The newspaper with which any such contract is made shall be designated as the newspaper for the publication of items specified in Section 613 of the Charter of the city for the period of such contract. In no case shall the contract price charged for such publication exceed the customary rates charged by such newspaper for the publication of comparable advertising of a private character. The period of such contracts shall not exceed one year. Notwithstanding the foregoing, if it appears to the city council that the rates offered are unfair, it need not designate such newspaper for the publication of those items. Upon making a finding to such effect, or if publication of a newspaper which has been so designated is suspended, then such matters may be published in any newspaper or on a City Website accessible through Internet or other appropriate technolog, deemed by the city council to provide an effective means of public notification of city council proceedings.

As an alternative to publication in a newspaper of city council agendas, digests of actions or other material required to be published pursuant to Section 613 of the Charter of the City of Sunnyvale, the City Clerk may elect to post city council agendas, digests of actions or other material to the official City Website using Internet technology.

No defect or irregularity in any proceedings taken under this section, or failure to designate a newspaper—under this section shall invalidate any city council action otherwise taken in accordance with law.

2.10.040. Publication of campaign contributions.

Pursuant to Section 1405 of the Charter of the City of Sunnyvale, the city clerk shall cause the publication of the name and occupation of, and the cumulative amount of contributions made by, any person whose cumulative contributions to any candidate for the office of city councilmember or committee supporting such a candidate equal or exceed one hundred dollars, along with the name of the candidate or committee to which the contributions were made, on the Saturday immediately preceding the date of any municipal election. Such publication shall be made in the newspaper or on the official City Website accessible through Internet technology designated for publication of city council agendas and digests of actions pursuant to Section 2.10.030 of this code.

The information to be published shall be obtained from the campaign statements filed pursuant to Section 84200(b)(4) of the California Government Code or, if amended or repealed, from the most recent campaign statement required pursuant to the Political Reform Act of 1974.

Notwithstanding the provisions of Section 84205 of the Government Code, any candidate who has received cumulative contributions of one hundred dollars or more from any person shall file with the city clerk a campaign statement, in accordance with the schedule set forth in Section 84200(b)(4) of the California Government Code, setting forth the information required by Section 1405 of the Sunnyvale Charter. The city clerk shall prescribe the form of such campaign statements.

SECTION 2. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision 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 3. 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. The Council therefore directs that the Planning Division may file a Notice of Exemption with the Santa Clara County Clerk in accordance with the Sunnyvale Guidelines for the implementation of CEQA adopted by Resolution No. 118-04.

SECTION 5. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 6. 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 of a notice once in The Sun, the official newspaper for publication of legal notices of the City of Sunnyvale, 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 _____, 2008, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, 2008, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM AND LEGALITY:

David E. Kahn, City Attorney