

**Council Meeting: July 20, 2010****SUBJECT: Process for Appointing Interim Councilmembers - continued
from May 11, 2010****REPORT IN BRIEF**

Most often, Councilmembers serve their full term and are replaced the day they leave office by an elected successor. Under this scenario, the transition between a Councilmember and his/her successor is seamless. On rare occasions, however, Councilmembers have left office prior to completing their term, on either a permanent or temporary basis. This report explores the City's options with regard to the appointment of interim Councilmembers under those circumstances, and recommends that Council establish a formal policy and process to follow in the future.

BACKGROUND

When in December of 2008 Councilmember Otto Lee announced that he had received orders to report for active military duty in Iraq, the City Council responded by considering related impacts and options (RTC 08-377), and eventually appointing Dean Chu as interim Councilmember on January 6, 2009 (RTC 09-004). The public's concern regarding the manner in which the appointment was made (ranging from questions of legality to concern that the process was rushed and the public's participation minimized), prompted Council to call on January 29, 2010 for a study of its policies and practices related to the appointment of interim Councilmembers. This report presents the results of that study.

EXISTING POLICY**City Policy**

Existing City Policy related to this subject is limited to the following section of the City 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. (Amended effective December 31, 1975, December 21, 1976, December 23, 1982 and January 17, 1992: previously Section 703)

State Law

California Military and Veteran's Code Section 395.8 (which supersedes the City Charter) precludes a Councilmember's seat from being declared vacant if the Councilmember is called to active military duty, but does allow for a temporary replacement (i.e., an interim Councilmember) at the discretion of the City Council.

DISCUSSION

This report does not focus on the circumstances under which an interim Councilmember could be appointed. Rather, *this report focuses on the process to be used to appoint an interim Councilmember if and when an appointment is deemed warranted.*

Process Options

Council has several options with regard to establishing protocol for the selection of future interim Councilmembers. *All of them require that the actual selection of an interim replacement take place in a noticed public session, following the opportunity for public input.*

Option 1:

Council could publicly announce the vacant seat, and appoint a Council subcommittee to solicit applications, conduct interviews subject to the Brown Act, and make a recommendation to the Council. The entire Council would then make an appointment at a public hearing with the opportunity for public comment.

Pros:

- Provides for the screening of most qualified candidates.
- Use of subcommittee makes efficient use of Council's time.

Cons:

- More time-consuming than Options 3 or 4 given the steps required to appoint a Council subcommittee.
- Could be criticized as substituting Council's judgment for that of the general public (who under normal circumstances are allowed to determine who will represent them on Council).

Option 2:

Council could publicly announce the vacant seat, and appoint a blue-ribbon panel of Councilmembers and community members to seek applicants, conduct interviews subject to the Brown Act, and make a recommendation to the entire Council. The entire Council would then make an appointment at a public hearing with the opportunity for public comment.

Pros:

- Provides for screening of most qualified candidates with addition of community input.

Cons:

- Most time-consuming option given the steps required to appoint a blue-ribbon panel.
- Difficult to interview candidates in open meeting.
- Could be criticized as substituting a blue-ribbon panel's judgment for that of the general public (who under normal circumstances are allowed to determine who will represent them on Council).

Option 3:

Council could publicly announce the vacant seat, receive applications during an open application period, interview all candidates subject to the Brown Act, and make an appointment at a public hearing with opportunity for public comment.

Pros:

- Open process with most opportunity for public participation.

Cons:

- Difficult to interview candidates in open meeting.
- Not the most efficient process.

Option 4:

Council could publicly announce the vacant seat, and simply appoint the individual receiving the most votes among those not elected to Council during the most recent general election.

Pros:

- The most expedient option, since no interviewing is required. The appointment is ministerial since the outcome was determined during the most recent general election.
- Reduced subjectivity and decision-making, and by extension a reduced potential for public debate and concern.
- Eliminates any concern that the seated Council are “hand-picking” their newest (interim) member.
- Could be interpreted as the “will of the voters” (as expressed during the most recent general election).

Cons:

- Could be interpreted as *not* reflecting the will of the voters – could result in the appointment of an individual receiving minimal support from the public (e.g., might have been the *only* individual to have run and not be appointed during the most recent election, and have received a very small percentage of votes as compared to those elected).
- Does not recognize that changed circumstances since the most recent election might alter the results reflected by that vote.
- Assumes that individual will want to serve – if not, then selecting candidate with next largest number of votes would not necessarily reflect voter support.

FISCAL IMPACT

There is no immediate fiscal impact associated with choosing a process for appointing future interim Councilmembers. Under most circumstances, the actual appointment of an interim Councilmember would not result in any fiscal impact either, since the cost of the interim appointment would be offset by the savings associated with the vacated seat. In the rare case that a fiscal impact was tied to a proposed interim appointment (as was the case when Councilmember Lee's military obligations resulted in an interim replacement), it would be detailed in the Report to Council outlining related options for that particular appointment, along with funding options for Council's consideration.

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 Web site.

ALTERNATIVES

Alternative 1: Adopt a process that would have Council publicly announce the vacant seat, and appoint a Council subcommittee to solicit applications, conduct interviews subject to the Brown Act, and make a recommendation to the Council. The entire Council would then make an appointment at a public hearing with the opportunity for public comment.

Alternative 2: Adopt a process that would have Council publicly announce the vacant seat, and appoint a blue-ribbon panel of Councilmembers and community members to seek applicants, conduct interviews subject to the Brown Act, and make a recommendation to the entire Council. The entire Council would then make an appointment at a public hearing with the opportunity for public comment.

Alternative 3: Adopt a process that would have Council publicly announce the vacant seat, receive applications during an open application period, interview all candidates subject to the Brown Act, and make an appointment at a public hearing with opportunity for public comment.

Alternative 4: Adopt a process that would have Council publicly announce the vacant seat, and simply appoint the individual receiving the most votes among those not elected to Council during the most recent general election.

Alternative 5: Other action as determined by Council.

RECOMMENDATION

Staff offers no recommendation as to which alternative to choose. Each is a viable option, and there is little in the way of professional expertise to suggest one over another. Which option to choose is really a matter of Council preference.

Staff does, however, consider it important that Council choose a process with which to appoint interim Councilmembers in the future, and that the process be memorialized as a formal Council policy.

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