

**Council Meeting: August 31, 2010****SUBJECT: Process for Appointing Interim Councilmembers****BACKGROUND**

On July 20, 2010, Council considered several options for establishing protocol for the selection of an interim Councilmember on the rare occasion when a Councilmember is called to active military service or in the event of a vacancy created by the death or involuntary removal of a member from office in the last 180 days of their term. Council took action to adopt a process in which Council would publicly announce an interim opening, receive applications during an open application period, hold an open and public meeting to interview all candidates structured to allow the public to ask questions or provide comment during the applicants' interviews, and hold a public hearing to receive public comment prior to making the appointment. Council further directed staff to draft a questionnaire to be submitted by the candidates, and that in the event there are five or more candidates for the interim opening, the appointment process will be conducted by instant runoff voting.

The purpose of this report is to present for consideration a draft policy outlining the process by which appointment of interim Councilmembers shall be made.

**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.

#### State Law

**California Military and Veteran's Code Section 395.8.** Any officer, elective or otherwise, who leaves or shall have left the service of any city in order to enter upon active service with the armed forces of the United States shall be reinstated and restored to his office upon his discharge or release from such active service with the armed forces; provided, such discharge or release is prior to the expiration of the term for which he has been elected or appointed.

#### **DISCUSSION**

City Charter contains specific provisions for filling any vacancy in the City Council by special municipal election, and authorizes Council to fill the vacancy by appointment if the vacancy was created by death or involuntary removal of a member within the last 180 days of the term. In the event of the anticipated absence of a Councilmember who is called to active military service, the California Military and Veteran's Code contains provisions which provide for the reinstatement and restoration of the member to office if the member is

discharged or released prior to the expiration of the term for which he/she was elected or appointed.

Council Policy 7.3.15 (Attachment A) was drafted pursuant to Council action July 20, 2010, at which time Council approved a process for the selection of an interim Councilmember on the rare occasion when a Councilmember is called to active military service or in the event of a vacancy created by the death or involuntary removal of a member from office in the last 180 days of their term. A draft questionnaire to be completed by candidates for appointment as an interim Council Member is also presented for consideration (Attachment B).

**FISCAL IMPACT**

None.

**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**

1. Approve Council Policy 7.3.15 (Attachment A) as submitted.
2. Approve Application/Questionnaire for Candidates for Appointment as Interim Council Member (Attachment B) as submitted.
3. Approve Council Policy 7.3.15 (Attachment A) with modifications.
4. Approve Application/Questionnaire for Candidates for Appointment as Interim Council Member (Attachment B) with modifications.
5. Take no action.

**RECOMMENDATION**

Staff recommends Alternatives 1 and 2: Approve Council Policy 7.3.15 and Application/Questionnaire for Candidates for Appointment as Interim Council Member as submitted.

Reviewed by:

Robert Walker, Director, Assistant City Manager  
Prepared by: Kathleen Franco Simmons, City Clerk

Approved by:

Gary M. Luebbers  
City Manager

**Attachments**

- A. Draft Council Policy 7.3.15.
- B. Application/Questionnaire for Candidates for Appointment as Interim Council Member.

## **Attachment A**

**Policy 7.3.15 Appointment of Interim Councilmembers**

---

**POLICY PURPOSE:**

The purpose of this policy is to promote transparency in the provision of a clear process for the City Council to appoint an interim Councilmember to serve on a temporary basis when a Councilmember is called to active military service or in the event a vacancy is created by the death or involuntary removal of a member from office within the last 180 days of their term. This policy is intended to provide processes in compliance with City Charter Section 604 and California Military and Veteran's Code Section 395.8.

**POLICY STATEMENT:**

1. In the event an absence from office is anticipated when a Councilmember must enter upon active military service pursuant to California Military and Veteran's Code, the City Council may appoint an interim Councilmember to serve until the discharge or release and return of the member who has been called to duty. In the event a vacancy is created by the death or involuntary removal of a member from office where the unexpired term of the deceased or removed member does not exceed one hundred eighty days, the City Council may appoint an interim Councilmember to serve the remainder of the term vacated. In either case, if Council decides to make an interim appointment, it shall be processed as follows:
  - A. At an open and public, regular meeting, Council shall announce the interim opening. In the event the opening is created by the death or involuntary removal of a member, the Council shall officially declare the seat vacant.
  - B. At the meeting at which the announcement is made, Council shall set an application period for receiving applications and questionnaires from candidates for appointment.
  - C. Council shall hold an open and public meeting to interview all eligible candidates. The interview process shall be structured to allow the public to ask questions or provide comment during the applicants' interviews.
  - D. Council shall hold a public hearing to receive public comment prior to making the appointment.
  - E. Following the public hearing, the Mayor shall announce the method by which voting will take place in accordance with the number of candidates. If there are five or more candidates for the interim opening, the appointment process shall be conducted by instant runoff voting.
    - (I) If there are less than five candidates, the Mayor shall announce each candidate's name. Council will vote on each candidate. The candidate receiving the most affirmative votes will be appointed. Should a tie between the candidates receiving the most affirmative votes occur, the affected applicants will be voted on again. If a tie still remains, the Mayor would ask the city attorney to draw the name of the person to be appointed.
    - (II) 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-

## COUNCIL POLICY MANUAL

choice votes, that candidate shall be declared to be elected. 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 elected. The City Clerk shall announce the result of the voting.

2. Pursuant to the Charter, if the Council fails to fill the interim vacancy created by the death or involuntary removal of a member within the sixty-day period, the City Council shall call a Special Municipal Election for the purpose of filling the vacancy. The Special Municipal Election shall be held within one hundred and twenty (120) days from the date the Council declares the vacancy to exist. If a general municipal or statewide election is scheduled within one hundred and eighty (180) days from the date the vacancy is declared, the Special Municipal Election shall be consolidated with the general or statewide election.

Lead Department: Office of the City Manager

**Attachment B**



**CITY OF SUNNYVALE  
APPLICATION / QUESTIONNAIRE FOR CANDIDATES FOR  
APPOINTMENT AS INTERIM COUNCIL MEMBER**

*The City supports its demographic diversity and encourages  
applicants from all groups to apply.*

<b>Office Use Only</b>	
Date Received:	_____
Residency	_____
Checked:	_____

Please print or type answers to all questions. Write N/A if not applicable.

General eligibility requirements: To qualify as a candidate for Interim City Council Member, a person must be 18 years of age, a Sunnyvale resident and must be a registered voter of the City. For more information, please contact the Office of the City Clerk at (408) 730-7595, TDD (408) 730-7501 or visit our Web site at: [Sunnyvale.ca.gov](http://Sunnyvale.ca.gov).

1. Applicant Name: \_\_\_\_\_  
Last First M.I

2. Current Residence \_\_\_\_\_  
Street City State Zip

Mailing Address: \_\_\_\_\_  
(If different from above) Street City State Zip

E-mail Address: \_\_\_\_\_

3. Phone Number: (Home) \_\_\_\_\_ (Work) \_\_\_\_\_ (Cell) \_\_\_\_\_

4. How long have you been a resident of Sunnyvale? \_\_\_\_\_

5. Are you a currently-registered voter in Sunnyvale? \_\_\_\_\_ When was the last time you voted?  
Month \_\_\_\_\_ Year \_\_\_\_\_

6. Are you currently serving or have you served on a City of Sunnyvale board or commission? \_\_\_\_\_  
If yes, which one? \_\_\_\_\_ Term currently serving \_\_\_\_\_  
\_\_\_\_\_ Term previously served \_\_\_\_\_

7. Why do you want to serve as an Interim Council Member?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. What skills or attributes can you bring to the City?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Why are you the best candidate to serve as Interim Council Member?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. Education: List college degrees and majors, and any relevant training or experience that demonstrates your ability to effectively serve the City.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

---

---

11. Briefly describe your current or last occupation.

---

---

---

12. Have you attended a City Council, board or commission meeting? If so, please describe what you learned and what improvements you would suggest the City consider.

---

---

---

13. Describe your involvement in community activities, volunteer and civic organizations. **Do not list party affiliation, memberships or activities in partisan political organizations.**

---

---

---

14. The City has a Code of Ethics and Conduct for Elected and Appointed Officials and attendance requirements that elected and appointed members are required to follow. Do you have any concerns in these two areas? If so, please describe.

---

---

---

**Please Note:** Pursuant to the Americans with Disabilities Act (ADA), the City of Sunnyvale will make reasonable efforts to accommodate persons with qualified disabilities during the interview process. Should you require special accommodations, please contact the Office of the City Clerk at (408) 730-7595 at least five days in advance of your scheduled interview.

**IMPORTANT NOTICE**

**A City Council member is a public official. As such, it is necessary to provide contact information to the public. Please note that all information provided on this form becomes a public record after it is officially filed. Please do not include any information on this form that you do not want posted on the City's Web site and the City's official roster.**

**City Council Members are required to file the Fair Political Practices Commission (FPPC) Statements of Economic Interest (Form 700), which are also a public record. A copy of this form is available in the Office of the City Clerk or by visiting [www.fppc.ca.gov](http://www.fppc.ca.gov).**

I certify under penalty of perjury that all statements I have made on this application / questionnaire are true and correct. I hereby authorize the City of Sunnyvale to investigate the accuracy of this information from any person or organization, and I release the City of Sunnyvale and all persons and organizations from all claims and liabilities arising from such investigation or the supplying of information for such investigation. I acknowledge that any false statement or misrepresentation on this application / questionnaire will be cause for refusal of appointment.

**THIS APPLICATION / QUESTIONNAIRE MUST BE SIGNED, DATED AND RETURNED PRIOR TO THE DEADLINE SET BY COUNCIL.**

Signature of Applicant

Date

---

---

Please return to: Office of the City Clerk, 603 All America Way, P.O. Box 3707, Sunnyvale, CA 94088-3707