



**CITY OF SUNNYVALE**  
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**MEMORANDUM**

**TO:** City Council  
**FROM:** David Kahn, City Attorney  
**DATE:** October 19, 2010  
**RE:** **DISCUSSION OF 2010 CHARTER REVIEW COMMITTEE**

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**REPORT IN BRIEF**

On May 24, 2010, the City Council reviewed and discussed the study issue summarizing the history of Sunnyvale's consideration of a directly-elected Mayor and the advantages and disadvantages of having a directly-elected Mayor. The Council voted to move forward with considering a directly-elected Mayor.

On June 15, 2010, Council reviewed alternatives for a Charter amendment in a November 2010 special election, as well as the costs for a November 2010 ballot measure in contrast to the cost of a November 2011 ballot measure. Following discussion, Council voted to not put a Charter amendment on the 2010 ballot unless there was another City ballot measure going forward. Council discussed options for term limits for a directly-elected Mayor and requested that Charter amendment language be brought back with options for term limits.

On July 20, 2010, the City Attorney presented Report to Council No. 10-183 regarding a proposed Charter amendment for a directly-elected Mayor for the November 2011 election ballot. The report included proposed Charter amendment language for a ballot measure changing the method of selecting a Mayor to a directly-elected Mayor with options for the term and term limits for the Mayor, as well as the costs for placing a Charter ballot measure on the November 2011 ballot. After discussion of the pros and cons of a directly-elected Mayor and placing a Charter amendment for a directly elected mayor on the November 2011 ballot, Council voted to appoint a Charter Review Committee to look at this issue.

This report is brought to Council for discussion to establish the procedures for the selection of the 2010 Charter Review Committee members, number of members to serve on the Committee, selection of the committee chair and vice chair, and the guidelines for the Committee operations.

## **BACKGROUND**

Cities in California are either “general law” or “charter” cities. General law cities have only those powers granted by state statute. Article XI of the California Constitution authorizes the adoption of a city charter by the majority vote of a city’s electorate. If adopted, the charter serves as the city’s constitution and a blueprint for city government and ordinances. A city charter includes guidelines for the city’s form of government, city council terms and districts, election and campaign procedures, and city departments.

The City of Sunnyvale adopted its City Charter in 1949, and it has been amended fifteen times since its adoption. The voters last amended the Sunnyvale City Charter in 2007 by voting in favor of amendments that modified and/or clarified certain sections of the Charter. Charter amendments are usually to make changes to the structure of city government or to make “housekeeping” changes to update the charter to conform to changes in state law or experience in administering the charter provisions.

### Methods of Amending a City Charter

The California Constitution establishes the requirements for both adoption and amendment of a city charter. Sunnyvale’s City Charter can be amended in three different ways:

1. Initiative. A Charter amendment can be initiated through the initiative process. At least 15% of the City’s registered voters would have to sign a petition requesting that a Charter amendment be placed on the ballot. The Charter amendment would then be placed on the ballot and would require a majority vote to become effective.
2. Charter Commission. A formal Charter Review Commission can be formed by putting on a ballot measure asking the voters to approve the formation of a Charter Review Commission with a list of candidates from which the voters would choose fifteen to serve on the Charter Review Commission. After the formal Charter Review Commission is approved by the voters, it has one year to prepare proposed Charter amendments for placement on the ballot; the City Council is not required to approve the Charter amendments. These amendments would need a majority vote of the electorate to become effective.
3. City Council. The Sunnyvale City Council can, by a majority vote, put proposed Sunnyvale City Charter changes on the ballot for voter approval. This was the method used for the 2007 election Charter amendments. The City Council may appoint an *ad hoc* Charter Review Committee to assist the Council in reviewing the Charter and to make recommendations to the Council on what Charter amendments to place on the ballot. This *ad hoc* Charter Review Committee would not have the legal status or authority of a Charter Review Commission elected by the voters and would serve as an advisory body to the City Council.

### History of Charter Review Committees in Sunnyvale

In 1967, the City Council appointed a citizen Charter Study Committee comprised of 35 registered Sunnyvale voters. Each councilmember submitted the names of 5 registered voters to

the City Clerk. This Committee met over a five-month time period. In 1975, the City Council again appointed a Charter Study Committee similar to the 1967 group, but each Councilmember submitted the names of 3 voters and the Committee was comprised of 21 members instead of 35. The Committee submitted its recommendations to the City Council, which held a public hearing on the recommendations before deciding which Charter amendments to place on the ballot. Similarly, the City Council appointed a 15-member Charter Review Committee in 1982, with each Councilmember nominating 2 members and the 15<sup>th</sup> member selected by the entire Council. Again, the Committee's recommendations for Charter amendments were submitted to the Council for public hearing and Council determination of which amendments would be placed on the ballot.

The last *Ad Hoc* Charter Review Committee was appointed by the City Council on July 18, 2006. The Committee was comprised of 15 members and each Council member appointed two Committee members, with the last member appointed by the Mayor and confirmed by Council. Council identified seven Charter issues as priorities for the Committee to review and make a recommendation on. Additionally, the City Council authorized the Committee to identify other Charter issues for review and recommendation and to provide the opportunity for public input on changes to the Charter.

The specific Charter issues looked at by the 2006 Charter Review Committee were:

1. City Council term limits
2. Board and Commission Issues
  - a. Eligibility
  - b. Residency, voter registration requirements
  - c. Successive terms
3. Maternity/paternity/family leave for Councilmembers
4. Two-year mayoral term
5. Election of the City Council at large instead of by seat
6. Direct election of the Mayor
7. Franchise requirements review and update
8. Number of regular City Council meetings per year
9. Modification of City Manager residency requirement to comply with State Constitution
10. Long-term budgeting requirement
11. Budget carry over for multi-year capital projects
12. Change City Council election certification date to first meeting in December
13. Location of City Council meetings
14. Change judging of election returns to certification of election returns
15. City Council proceedings
  - a. Change ability to "punish" for disorderly conduct to ability to "sanction"
  - b. Clarify reporting of City Clerk to City Manager

- c. Add Internet as possible communication and publication option
16. Add Internet as publication option for ordinances and legal notices
  17. Make Charter consistent with regard to budget review by Commissions with Charter review authority
  18. Clarify that manager *pro tempore* needs to be appointed for absence or disability of two weeks or more
  19. Clarify that City Manager can be removed with or without cause
  20. Clarify that City Clerk is appointed and supervised by the City Manager
  21. Clarify that City Attorney can be removed with or without cause, requires minimum of seven years of experience, can provide advice in electronic format and supervises outside counsel for City-related business

On April 10, 2007, the 2006 *Ad Hoc* Charter Review Committee submitted its Final Report and Recommendations to the City Council. (A copy of this report is a public record and available from the City Clerk).

#### Council Decision on 2010 Charter Review Committee

The City Council needs to decide if it wants to appoint a 2010 Charter Review Committee. If so, there are a number of issues the Council needs to include in its decision:

- Time frames for the appointment of the Committee and the completion of its work and recommendation to the Council.
- The number of Committee members, and the recruitment and appointment process for members.
- Committee staffing and budget issues (*i.e.*, will the Committee be staffed with current City staff, will a consultant be hired, and how will the costs of the Committee be budgeted).
- Whether the Committee should be provided with a list of issues established by the Council for review and recommendations and its work limited to those issues or given discretion to identify and select issues the Committee wishes to review without Council approval.

The purpose of this Report to Council is to provide options and recommendations in each of these areas, so that the Council can determine if it wishes to proceed to appoint an 2010 Charter Review Committee and, if so, the membership and guidelines for the Committee's operation.

## DISCUSSION

### Timetable for Charter Amendments on the November 2011 Ballot

The City of Sunnyvale is required to transmit a request for a ballot measure with the proposed language for the Charter amendment to the County Registrar of voters at least 88 days before the election date. For the November 2011 election, this will be on or about August 12. The proposed timetable would focus on the November 2011 election, which would provide the Committee adequate time to complete its recommendations by March 2011.

The Charter Review Committee should submit its Final Report and Recommendations to the City Council no later than the end of April 2011 to determine which of the Committee's recommended changes to the Charter it wants to place on the ballot. Measures can be placed on the November 2011 ballot or subsequent ballots. After Council provides direction to staff on which of the recommendations it wants to place on the ballot, the next step would be the drafting of the resolution and ballot language placing the Charter amendments on the ballot for forwarding to the Registrar of Voters. In order to meet the deadlines of the Registrar of Voters, the resolutions and ballot measures need to be brought to the Council for adoption in June 2011 to insure that all election filing deadlines are met.

Therefore, at the time of the appointment of the 2010 Charter Review Committee the Council may want to set a due date for all Committee recommendations to be received by the Council to allow time to adopt a resolution and ballot measure by the end of June 2011.

### Membership of the 2010 Charter Review Committee

An important issue is the membership of the 2010 Charter Review Committee. The Council has discretion in determining how to select members for the Committee. In looking at potential members, Council can consider things such as knowledge of Sunnyvale government, representation of different groups in the community, experience on similar citizen committees, ability to communicate well and work with others, and whether members have to be registered voters or not. Possible sources of Committee members include individual Sunnyvale residents, representatives from community organizations or neighborhood groups, members of Sunnyvale boards and commissions, one or more Council members, or any combination from the above groups. Considerations in the selection of each group are discussed below.

Registered voters residing in Sunnyvale provide the greatest diversity of viewpoints and perspectives, and represent the largest pool of potential Committee members. However, because some voters interested in being on the Committee may have no prior background in Sunnyvale city government, this group may require the most staff support, orientation and training to be successful on the Committee.

Representatives from City boards and commissions have prior experience in Sunnyvale city government and working with City staff and the Committee would benefit from their experience and background. Current Board and Commission members already commit substantial amounts of time to volunteering for the City, and service on a Charter Review Committee would require substantial meetings over a relatively short time period to discuss and develop recommendations. It may be very difficult for current board and commission members to make this additional time

commitment; this conflict would be somewhat less if applicants are former board and commission members.

Sunnyvale has a number of community civic organizations such as the Lion's Club, Rotary, League of Women Voters, Kiwanis, and others. Organization members are usually active in the community and have an interest in city government, and can represent a broad spectrum of community interests. A consideration is that Sunnyvale has a large number of civic organizations and it may be awkward to appoint a member from one group if there is not room on the Committee for representatives from other similar groups, and certain organizations may be perceived as having a special interest or agenda in participating on the Charter Review Committee.

Of course, the Council can also decide that the Committee membership should be a combination of some or all of the potential individuals and groups and designate a certain number of positions on the Committee for each group.

The recruitment process for the 2010 Charter Review Committee will depend on what the Council decides should be the membership. If the members are to be selected from individual voters then print and electronic ads in local papers and on the City Website will be most effective. Recruitment of board and commission members and/or civic organizations could be accomplished by either individual letters sent to them or in-person appearances for recruitment by staff or Council at scheduled meetings. If the Council decides that each Councilmember should have a certain number of appointments to the 2010 Charter Review Committee that are not subject to full Council approval, then individual Councilmember recruitment of interested citizens may be most effective.

### Committee Size

Before proceeding to the selection and appointment of Committee members, the Council will need to designate the number of Committee members. Recommended options include 7, 15, or 21 Committee members, although the Council can, of course, choose any number. Staff would not recommend the 1967 number of 35 committee members because of the difficulty in organizing and arranging meetings with that many members. In general, smaller committees are more efficient in meeting and conducting business than a larger committee. In considering the appropriate size for the *Ad Hoc* Charter Review Committee, the Council will need to balance the ability of a smaller group to organize and conduct business quickly with the desire for adequate community diversity and perspectives. In any event, there should be an odd number of Committee members to avoid a tie vote on recommendations.

### Selection and Appointment of Committee Members

Past Sunnyvale charter review committees have all allowed individual Councilmembers to nominate and appoint a specific number of committee members from the applicant pool. The number of appointments given to each Councilmember depends on the total Committee membership: if 7 members, then each Councilmember has one appointment, if 15 members, then each Councilmember has 2 appointments; and if 21 members, each Councilmember would have 3 appointments. If the Council elects to have a 15-member Committee, then past practice has

been to have the either the Mayor or the entire Council nominate and vote on the 15<sup>th</sup> Committee member.

At the time of selection and appointment, the Council can choose to elect one of the members as chair, allow the Mayor to appoint the chair, or not appoint a chair and allow the Committee members to nominate and select their own chair.

#### Staffing of 2010 Charter Review Committee

A Charter Review Committee will require staff assistance to do its work. In 2006, the City Attorney's office provided support to the *Ad Hoc* Charter Review Committee and will do so again if directed to do so by the Council. The Committee met twice a month over a period of seven months, as well as held two public hearings. The City Attorney attended all of the meetings of the Charter Review Committee, along with his paralegal, who took and prepared the minutes, as well as provided other clerical support needed to conduct the meetings and business of the Committee. The exact number of hours required to support the 2010 Charter Review Committee would depend on the membership size of the Committee and its scope of work on the Charter. There will also be City Clerk hours required to support the agenda and notice requirements for meetings.

For the 2006-07 fiscal year, internal staffing costs for the 2006 *Ad Hoc* Charter Review Committee were \$33,893.46. This included 93.20 hours of attorney time, 328.5 hours of legal staff time, and 1.5 hours of IT support time. As these are 2006 dollars, the same time would be more expensive in 2010-11. Council should note that the 2006 Committee had a prescribed scope of work from the Council and were also permitted to look at or review issues other than those specifically asked by the Council. If the 2010 Committee is limited to looking at the directly-elected mayor issue, costs should be lower. On the other hand, if the scope of Charter review includes multiple issues and the Committee is allowed to add its own issues, costs could equal or exceed the 2006 Committee costs.

The Office of the City Attorney has not budgeted this special work for 2010-11, so Council would need to provide a budget supplement to fund the Charter Review Committee work.

#### Direction on Issues to Be Studied

In 2006, the Council identified 7 issues for the *Ad Hoc* Charter Review Committee to review and ranked them by priority. In addition, the City Council authorized the Committee to identify other Charter issues for review and recommendation. The Committee also identified 4 more substantive issues that it selected, as well as Charter issues raised by City staff and the public. In addition, the Committee identified 11 "housekeeping" issues regarding amendments to reflect current practice or to revise the Charter to incorporate current technology.

The Council needs to decide if it wants to provide the 2010 Charter Review Committee with a pre-determined agenda looking at only the directly-elected mayor issue, multiple Charter issues and questions with direction to look only at those issues, or to allow the Committee broad discretion to identify both substantive and clean-up Charter issues on its own and to independently determine what Charter issues it will make recommendations on.

### Guidelines for 2010 Charter Review Committee

The Council is not required to adopt by-laws or guidelines for the 2010 Charter Review Committee and the Committee can be given the authority to determine how it wants to organize itself and conduct business. Alternatively, the Council can provide some structure and direction to the Committee through the adoption of one or more of the following guidelines:

- The Committee should give highest priority to any Charter issue selected by a majority of the Councilmembers.
- The Committee should give second-highest priority to any Charter issue selected by an individual Councilmember.
- The Committee must provide for public notice and opportunity for comment by the public, Councilmembers and Board and Commission members before making any recommendation.
- The Committee should look at only those Charter issues identified by the Council and City staff; or the Committee may look at any Charter issue it determines needs review and a recommendation.
- The Committee should attempt to review relevant research and expert testimony on any Charter issue where such research is reasonably available from the League of California Cities, or other similar organization.
- Other guidelines developed and determined appropriate by the Council

### Application of Brown Act to the 2010 Charter Review Committee

The 2010 Charter Review Committee will be subject to the Brown Act noticing, agenda and open meeting requirements.

### **FISCAL IMPACT**

The fiscal impact will depend on the Council's decision on the number of members on the 2010 Charter Review Committee and the scope of its Charter review authority. The total costs from the 2006 *Ad Hoc* Charter Review Committee were \$34,308.72

### **CONCLUSION**

The Sunnyvale City Charter is the City's constitution and provides legal guidelines for the City's government and operations. First adopted in 1949, the Charter has been amended by the voters on 15 separate occasions, most recently in November, 2007. The Council can, by resolution, put on ballot measures to amend the City Charter, and the Council from time to time can appoint a citizen *ad hoc* Charter Review Committee to review and make recommendations on either specific Charter provisions or the entire Charter. The last such *ad hoc* committee was appointed in 2006, to look at the Charter issue of an elected mayor, among other issues.

This Report to Council outlines the options the Council has for the selection and appointment of a 2010 Charter Review Committee and for the scope of the Committee's authority and Charter review. The Committee's recommendations would be presented to the Council in approximately April 2011, for Council consideration for the November 2011 election. There are costs associated with the appointment and support of a 2010 Charter Review Committee.

The Council should consider the options for the Charter Review Committee and provide direction to staff on the size and selection process for Committee members. The Council also needs to provide direction on what funding should be used for the Committee.

### ALTERNATIVES

1. Council directs that a 2010 Charter Review Committee be created, and that the Committee should have the following characteristics:
  - a. The Committee should be comprised of \_\_\_\_\_ members.
  - b. The Committee should include \_\_\_\_\_ registered voters and \_\_\_\_\_ members of the Community whether or not a registered voter.
  - c. The Committee should include \_\_\_\_\_ members of Sunnyvale civic organizations.
  - d. The Committee should have \_\_\_\_\_ current Sunnyvale Board and Commission members.
  - e. The Committee should (should not) include a City Councilmember.
  - f. The Council (will)(will not) select the chair of the Committee after its members have been appointed.
  - g. The Committee's Charter review authority is (limited to review and recommendations on only those charter provisions selected by the Council) (is not limited and the Committee has discretion to identify, review and make recommendations on any Charter provisions).
  - h. The Council (does)(does not) establish guidelines for the Committee's operations. The guidelines for the Committee's operations are:
    - i. The Committee should give highest priority to any Charter issue selected by a majority of the Councilmembers.
    - ii. The Committee should give second-highest priority to any Charter issue selected by an individual Councilmember.
    - iii. The Committee must provide for public notice and opportunity for comment by the public, Councilmembers and Board and Commission members before making any recommendation.
    - iv. The Committee should look at only those Charter issues identified by the Council and City staff; or the Committee may look at any Charter issue it determines needs review and a recommendation.

- v. The Committee should attempt to review relevant research and expert testimony on any Charter issue where such research is reasonably available from the League of Cities, or other similar organization.
  - vi. Other guidelines developed and determined appropriate by the Council  
\_\_\_\_\_.
- i. Additional funds in the amount of \_\_\_\_\_ are allocated by the Council to fund the 2010 Charter Review Committee.
2. Council directs that a 2010 Charter Review Committee not be established.

### **RECOMMENDATIONS**

Staff requests that the City Council provide direction regarding the establishment of a 2010 Charter Review Committee. If the Council establishes this committee, staff requests that the Council provide direction from the options presented in this Report to Council on the composition, selection, authority and funding of the 2010 Charter Review Committee.