

**Council Meeting: August 9, 2011**

SUBJECT: Resolution Declaring a Vacancy of City Councilmember Seat No. 6 and Establishing the Process for Filling the Vacancy

DISCUSSION

Due to illness, Councilmember Ron Swegles provided the City notice of retirement from the Sunnyvale City Council effective July 20, 2011. After serving on the Sunnyvale City Council since 2003, Councilmember Swegles unfortunately passed away shortly thereafter.

Sunnyvale City Charter Section 604 provides that within 30 days of the commencement of the vacancy (July 20, 2011), the City Council must officially declare the seat vacant. The Charter dictates the vacant seat be filled by a Special Municipal Election held within 120 days from the date the Council declares the vacancy or consolidated with a general municipal election if one is scheduled within 180 days. A General Municipal Election for the City of Sunnyvale has been called for November 8, 2011 and includes Councilmember Swegles's former Seat No. 6.

Because the Charter requires a Special Municipal Election to fill former Councilmember Swegles's vacant seat to be consolidated with the November, 2011 General Municipal Election which includes Seat No. 6, the result would be that the elections to fill the temporary vacancy and the new term would both be certified at the first regular meeting in January, 2012 and there would be no unexpired term in Seat No. 6. Consequently, the November 8, 2011 General Municipal Election will be held in lieu of a Special Municipal Election to fill Councilmember Seat No. 6.

EXISTING POLICY

Sunnyvale City Charter Section 604 provides that in the event of a vacancy, within 30 days of that vacancy, the Council must declare the seat vacant and call a Special Municipal Election to fill the vacancy for the unexpired term. In the event of a vacancy from the death or involuntary removal of a Council member, the vacancy shall be filled by appointment within 60 days. The Special Municipal Election must occur within 120 days from the date the seat is declared vacant or within 180 days if the Special Municipal Election will be consolidated with a General Municipal Election. The newly elected officer shall serve until the remainder of the unexpired term.

FISCAL IMPACT

As the General Municipal Election for November 8, 2011 has already been called, all election costs have previously been budgeted for by the City Clerk's office and addressed in RTC 11-109 and Resolution 481-11.

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.

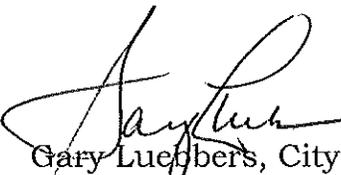
ALTERNATIVES

1. Adopt the proposed resolution declaring a vacancy of City Councilmember Seat No. 6 and establishing the process for filling the vacancy.
2. Adopt with modifications the proposed resolution declaring a vacancy of City Councilmember Seat No. 6 and establishing the process for filling the vacancy.

RECOMMENDATION

Approval of Alternative 1: Adopt the proposed resolution declaring a vacancy of City Councilmember Seat No. 6 and establishing the process for filling the vacancy.

Approved by:


Gary Luegbers, City Manager



David Kahn, City Attorney

Prepared by: Jennifer Woodworth, Paralegal

Attachments

- A. Resolution 481-11 Calling the General Municipal Election of November 8, 2011
- B. Proposed Resolution Declaring a Vacancy of City Councilmember Seat No. 6 and Establishing the Process for Filling the Vacancy

RESOLUTION NO. 481-11

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE CALLING THE GENERAL MUNICIPAL ELECTION FOR THE ELECTION OF COUNCILMEMBERS FOR SEAT NUMBERS 4, 5, 6 AND 7 TO BE HELD IN THE CITY OF SUNNYVALE ON NOVEMBER 8, 2011, REQUESTING CONSOLIDATION OF ELECTIONS, REQUESTING COUNTY SERVICES AND DETERMINING TO LEVY COSTS OF CANDIDATES' STATEMENTS

WHEREAS, Article XIV, Section 1400, of the Charter of the City of Sunnyvale requires that a General Municipal Election to fill elective offices be held in the odd numbered years on the date established by General Law for the election of governing members of elementary school districts; and

WHEREAS, an election may be ordered to be held in other political subdivisions on the same day, in the same territory, or in territory that is in part the same; and

WHEREAS, whenever two or more elections of any legislative or congressional district, public district, city, county or other political subdivision are called to be held on the same day, in the same territory, or in territory that is in part the same, such elections may be either completely or partially consolidated pursuant to Part 3 (commencing with Section 10400) of Division 10 of the Elections Code and Section 5342 of the Education Code; and

WHEREAS, Section 10002 of the Elections Code authorizes the City Council to request the assistance of the County Registrar of Voters to provide election services to the City;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE THAT:

1. **CALLING GENERAL MUNICIPAL ELECTION.** Pursuant to Section 1400 of the Charter of the City of Sunnyvale, a General Municipal Election hereby is called to be held in and for the City of Sunnyvale on Tuesday, November 8, 2011, for the purpose of electing four Councilmembers, each for a full term of four years, one to the office of "Councilmember Seat No. 4," one to the office of "Councilmember Seat No. 5," one to the office of "Councilmember Seat No. 6" and one to the office of "Councilmember Seat No. 7."

2. **DUTIES OF CITY CLERK.** The City Clerk hereby is directed to do all things required by law to effectuate such General Municipal Election including, but not limited to, required publications, postings, noticings and filings.

3. **CONSOLIDATION OF ELECTIONS.** Pursuant to Part 3 (commencing with Section 10400) of Division 10 of the Elections Code, the City Council hereby requests the governing body of any such other political subdivision, or any officer otherwise authorized by law, to partially or completely consolidate such elections, and to further provide that, upon consolidation, the consolidated election shall be held and conducted, election officers appointed, voting precincts designated, ballots printed, polls opened and closed, ballots opened and returned, returns canvassed, and all other proceedings in connection with the election shall be regulated and done by any body or official authorized by law to perform such functions and canvass the returns of the election; and that this City Council consents to such consolidation.

4. CONTRACT WITH REGISTRAR. Pursuant to Section 10002 of the California Elections Code, the City Council hereby requests the Board of Supervisors of the County of Santa Clara to permit the Registrar of Voters to render services to the City of Sunnyvale relating to the conduct of Sunnyvale's General Municipal Election to be held on Tuesday, November 8, 2011. Services shall be of the type normally performed by the Registrar of Voters in assisting the clerks of municipalities in the conduct of elections including, but not limited to, those certain services set forth in Section 3 hereof.

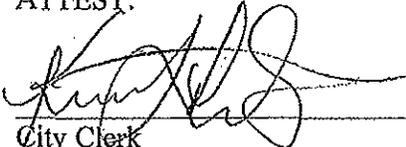
Subject to the approval of the Board of Supervisors of the foregoing requests, the City Clerk is hereby authorized to engage the services of the Registrar of Voters of the County of Santa Clara to aid in the conduct of the election. Further, the City Director of Finance is authorized and directed to pay the costs of services, provided that no payment shall be made for services which the Registrar of Voters is otherwise required by law to perform.

5. LEVYING OF COSTS OF CANDIDATES' STATEMENTS. Pursuant to Section 13307 of the Elections Code, the City Council hereby determines to levy against each candidate availing himself or herself of the service of including a candidate's statement not to exceed two hundred (200) words in length in the voter's pamphlet, the actual prorated costs of printing, handling, translating and mailing the candidate's statement, if any, incurred by the City. It is estimated that the pro rata costs of printing, handling, translating and mailing each candidate's statement filed pursuant to Section 13307 of the Elections Code will be approximately Two Thousand Three Hundred Eighty-Eight Dollars (\$2,388.00). Candidates filing a statement shall pay in advance his or her pro rata share. The provisions of this section are subject to the provisions of Chapter 2.28 of the Sunnyvale Municipal Code relating to in lieu petitions. The City Clerk shall provide written notice to such effect with each set of nomination papers issued. Candidates shall not be permitted to submit materials other than the candidate's statement with the sample ballot and the voter's pamphlet.

6. TRANSMITTAL OF RESOLUTION. The City Clerk is hereby directed to submit forthwith a certified copy of this resolution to the Board of Supervisors, to the Registrar of Voters, and to the County Clerk of the County of Santa Clara.

ADOPTED by the City Council at a regular meeting held on June 7, 2011, by the following vote:

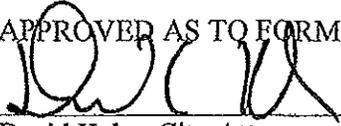
- AYES: LEE, SPITALERI, GRIFFITH, HAMILTON, MOYLAN, WHITTUM
- NOES: NONE
- ABSTAIN: NONE
- ABSENT: SWEGLES

ATTEST:


 City Clerk
 (SEAL)

APPROVED:


 Mayor

APPROVED AS TO FORM AND LEGALITY:


 David Kahn, City Attorney

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE DECLARING A VACANCY OF CITY COUNCILMEMBER SEAT NO. 6 AND ESTABLISHING THE PROCESS FOR FILLING THE VACANCY

WHEREAS, Councilmember Ron Swegles submitted his notice of retirement from the Sunnyvale City Council effective July 20, 2011, and sadly passed away on July 21, 2011; and

WHEREAS, City Charter, Section 604 requires that within thirty days of the commencement of a vacancy, except when created by the death or other involuntary removal of a member, the City Council shall officially declare the seat vacant and call a Special Municipal Election for the purpose of filling such vacancy, and a vacancy was created by the July 20 retirement of Councilmember Ron Swegles; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, the City Council adopted Resolution 481-11 on June 7, 2011, calling a General Municipal Election to be held in the City of Sunnyvale on November 8, 2011 for the purpose of electing four Councilmembers, each for a full term of four years, including one to the office of Councilmember Seat No. 6 and a Special Election would need to be consolidated with the November 8, 2011 General Election for Councilmember Seat No. 6; and

WHEREAS, Councilmember Swegles held Councilmember Seat No. 6 whose term expires at the first regular meeting in January when a successor is elected and qualified ; and

WHEREAS, the term for the newly elected Councilmembers will commence at the first regular meeting in January, 2012, at which the City Council shall certify the election results, and the results of a Special Election would also be certified at the first regular meeting in January, 2012, so that there would be no remaining term for Councilmember Seat 6 remaining to serve;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE THAT:

1. Based on Councilmember Swegles's retirement on July 20, 2011, Councilmember Seat No. 6 is declared vacant effective July 20, 2011.
2. The term for Councilmember Seat No. 6 expires in January, 2012, and the City has previously called a General Election for November 8, 2011, to fill Council Seat. No. 6.
3. A Special Election called to fill Council Seat No. 6 would also take place on November 8, 2011, and the results would not be certified until the expiration of the term for

Council Seat No. 6 in January, 2012, at the same time as the results filling Councilmember Seat No. 6 for the next term are certified.

4. The previously called General Municipal Election on November 8, 2011, shall be held in lieu of a Special Municipal Election to fill Council Seat No. 6 as the position will be filled on the same date as with a Special Election.

Adopted by the City Council at a regular meeting held on _____, 2011, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM AND LEGALITY:

David Kahn, City Attorney