

**Council Meeting: August 23, 2011****SUBJECT: Maternity Leave for Board and Commission Members****BACKGROUND**

Despite their volunteer status, Board and Commission members serving the City are expected to attend all regularly scheduled meetings, and as many special meetings as possible. Unless excused, absences can lead to the dismissal of a board or commission member, so maintaining a healthy attendance record is a serious matter.

Excused absences are limited to those meeting specific conditions and circumstances (see "Existing Policy" below) which do not currently include maternity. At the August 9, 2011 Council meeting, Vice Mayor Griffith indicated that the addition of maternity leave to the list of circumstances warranting excused absences for City board and commission members had been of interest for some time, and that the current threat of losing a trained commissioner due to pregnancy made this a timely issue for Council's consideration. Mayor Hamilton requested that staff add the item to Council's next agenda.

Council Policy requires that any revision to its Board and Commission Bylaws undergo a review by a Council Subcommittee prior to consideration by the full Council. Due to time sensitivities, the Council Subcommittee has opted to waive its review of this proposed revision, requesting that it be forwarded directly to the full Council.

EXISTING POLICY**Council Policy 7.2.19: Boards and Commissions, Section 2.H.II: Attendance**

Each member of a City board or commission is expected to attend all regularly scheduled meetings*, and as many special meetings as possible. When a board or commission member knows in advance that he/she will be absent from a meeting, the member shall give advance notice to the chair and/or staff liaison.

The board/commission chair shall, in consultation with the staff liaison, propose that each absence be "excused" or "unexcused". Each board or commission shall then determine by general consent (or, failing to achieve general consent, by majority vote) their members' absences from regularly scheduled meetings as excused or unexcused** and shall include that record in official meeting minutes. Absences from special meetings shall be recorded but shall not be classified as "excused" or "unexcused".

Unexcused absences from three consecutive regularly scheduled meetings, or from more than 25% of all regularly scheduled meetings over any twelve consecutive month period, shall result in that member's seat being declared vacant by the city clerk. Any declaration of vacancy based on unexcused absence from more than 25% of all regularly scheduled meetings over any consecutive 12-month period shall be appealable to the City Council. (Declarations based on absence from three consecutive regularly scheduled meetings are Charter-based and are not appealable.)

Board and commission members are responsible for monitoring their own attendance records. Staff shall prepare for the City Council semi-annual reports of all the City's boards and commissions showing the attendance of each member at both regular and special meetings during the past 12 months. The percent of regularly scheduled meetings attended shall only be shown for board and commission members having been in office at least six months.

Council shall take into consideration board and commission member attendance records, including tardiness, when evaluating the overall performance of board and commission members.

* *Regularly scheduled meetings* are defined as those in alignment with the general description provided the public as to the times that board or commission routinely meets. For example, if the Heritage Preservation Commission is advertised as meeting the first Wednesday of every month, meetings held on these dates only shall be considered "regular meetings". Any other meetings shall be considered special meetings. Regularly scheduled meeting *dates and times* for all boards and commissions shall be posted on the City's Web site and in the Boards and Commissions Handbook.

** *Excused absences* shall be limited to those which meet both of the following requirements:

- (a) The absent member must have informed the chair and/or the City staff liaison to the board or commission, of their intended absence prior to the scheduled meeting. (Failure to inform the chair or the staff liaison prior to the meeting shall result in an unexcused absence, unless extenuating circumstances prevent advance notice), *and*
- (b) The absence is due to one of the following:
 - i A death in the family,
 - ii Personal illness,
 - iii Board or commission-related business,
 - iv Personal leave (limited to one per fiscal year for those boards/commissions meeting monthly or less frequently and to 10% of regularly scheduled meetings for those meeting more frequently)
 - v Emergency, or
 - vi Decision by member's supervisor in employment or required military service.

City Charter, Section 1005.

If a member of a board or commission absents himself/herself from three regular meetings of such board or commission, consecutively, unless by permission of such board or commission expressed in its official minutes, or is convicted of a crime involving moral turpitude, or ceases to be a qualified elector of the City, his/her office shall become vacant and shall be so declared by the City Council. (Amended effective December 31, 1975)

Council Policy 7.2.19: Boards and Commissions, Section 2.R: Council Subcommittee

A standing subcommittee of three members of the City Council shall review all (board and commission) bylaw revisions. The role of the subcommittee shall be to review the proposed bylaws before consideration for action by the full Council. Subcommittee meetings are subject to Brown Act noticing requirements.

DISCUSSION

The question at hand is whether or not maternity leave should be granted to board and commission members.

Arguments in Favor

- The Family Medical Leave Act (FMLA--Federal law which, in part, requires employers to provide maternity leave to employees) does not apply to volunteers, but the spirit of that law is as applicable to volunteers as it is to regular employees.
- Volunteers give to their community without compensation. The City should make it as easy as possible for volunteers to give by eliminating obstacles wherever feasible.
- Finding sufficient volunteers to fully staff all of the City's boards and commissions at any given time has long been a challenge. If Council does not allow maternity leave as an excused absence, the City will lose the service of some who would otherwise have served.

Arguments Against

- FMLA protects regular employees from the loss of their job and related property rights (salary). FMLA does not apply to volunteers because they have no property rights to lose.
- Board and Commissioner members can only be effective if they attend their advisory bodies' meetings. Extended absences, regardless of reason, are not conducive to maintaining boards' and commissions' effectiveness.
- The concept of excusing members for maternity leave is simple enough, but clearly defining expectations may be very difficult for those tasked with implementation. How long does maternity leave last? Does it include caring for a newborn? Is there a limit to the number of meetings a board or commission member may miss due to maternity?
- Excusing absences due to maternity will open the door to additional requests (e.g., caring for a very ill relative).

FISCAL IMPACT

There is no fiscal impact associated with this report.

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.

This report was also distributed to all board and commission members as "Information Only". Since there is no board or commission charged with advising Council on the framework of the board and commission program, any board or commission member should feel free to offer testimony to the Council as an individual member of the public.

ALTERNATIVES

1. Approve maternity leave as an excused absence for board and commission members as depicted by Attachment A.
2. Approve maternity leave as an excused absence for board and commission members with modifications to Attachment A as determined by Council.
3. Do not approve maternity leave as an excused absence for board and commission members.

RECOMMENDATION

Staff makes no recommendation. Board and Commission members are advisory to City Council and not to staff. Staff believes there are good arguments on both sides of this issue, and that the "right" alternative is that which Council believes will result in the most effective, efficient board and commission program.

Staff recommends Council choose from Alternatives 1, 2 and 3 above.

Prepared by:

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Approved by:

Gary M. Luebbers
City Manager

Attachments

Attachment A

(II) **Attendance**

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