

## **Subcommittee Report: May 4, 2012**

### **Subject: Consideration of Change in Terms for Housing & Human Services and Bicycle and Pedestrian Advisory Commissions, and Potential Changes to Council Voting Process for Commissioner Appointments**

#### **REPORT IN BRIEF**

Two issues have been brought before Council for consideration. The first involves the need to stagger the terms for commissioners on the Housing & Human Services and Bicycle and Pedestrian Advisory Commissions. The second involves consideration of alternatives to the current Council process for voting on commission appointments.

#### **BACKGROUND**

Members of the Bicycle and Pedestrian Advisory Commission raised concerns about the current cycle of term expirations for its members. As it stands, multiple terms expire simultaneously, creating a situation where a large quantity of commission experience departs simultaneously to be replaced by brand new commissioners. Commission members asked Council to look into the possibility of shortening BPAC terms to stagger the departure of experienced commissioners. Upon closer inspection, it was determined that every commission except the Housing & Human Services Commission and the BPAC have appointments staggered to minimize commission disruption.

Additionally, the subcommittee was tasked with examining the current voting method used by Council when commission appointments are made. The existing voting process works well for a small number of vacancies and a small number of applicants, but it can be cumbersome when a large number of vacancies or applicants must be considered, resulting in very long council meetings.

#### **EXISTING POLICY**

Regarding terms of service, Council Policy 7.2.19 2B(V) states

##### **(V) Limitation on Terms**

Any person appointed to a board or commission shall be immediately eligible, upon the expiration of their term or resignation prior to completion of their term if appointed to a different board or commission, to serve on a different board or commission.

All board and commission members are eligible to serve two successive four year terms on the same board or commission. No person who has served two such successive four-year terms shall be eligible for appointment to that same board or commission for two years following the expiration of the second full term for which the member was appointed and served. Serving an unexpired term of up to 2 years in length shall not count toward years served in terms of eligibility.

Regarding the method of appointment, the City Charter states

#### **Section 1002. Appointments. Qualifications.**

Except as otherwise provided in this Article:

The members of each board or commission shall be appointed, and shall be subject to removal, by motion of the City Council adopted by at least four affirmative votes.

No member of any board or commission shall be eligible to serve for more than two consecutive four-year terms nor shall such member be eligible for appointment to the same board or commission for two years after the expiration of the second full term for which the member was appointed and served. Any person appointed to a board or commission to fill an unexpired term of not more than two years in length shall be eligible to serve two full four-year terms upon the expiration of the unexpired term for which such person was appointed.

Any person appointed to a board or commission shall be immediately eligible, upon the expiration of their term or resignation prior to completion of their term if appointed to a different board or commission, to serve on a different board or commission. The Council shall consider whether appointment of a person on a board or commission to serve on a different board or commission is in the best interest of the City.

Unless otherwise provided, the members first appointed to boards and commissions composed of four members shall so classify themselves by lot that each succeeding July 1st, the term of one of their number shall expire. If the total number of the members of a board or commission to be appointed exceeds four, the classification by lot shall provide for the grouping of terms to such an extent as is necessary in order that the term of at least one member shall expire on each succeeding July 1st. (Amended effective December 31, 1975, May 1, 1989, November 30, 1995, December 14, 2005 and November 28, 2007)

Additionally, Council Policy 7.2.19 2D states

**D. Appointment**

Appointments of board and commission members shall be placed on the agenda at a City Council meeting.

The appointment process will be conducted as follows:

The Mayor will announce by board or commission each vacancy including its term, and then will read each applicant's name. Council will vote on each applicant. The candidate receiving the most affirmative votes and at least four affirmative votes will be appointed. Should no candidate receive at least four affirmative votes, the vacancy will remain. 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, and the affected applicants each have received at least four affirmative votes, the Mayor would ask the city attorney to draw the

name of the person to be appointed. The process is repeated for each board or commission.

If vacancies still exist after the appointment process is conducted, staff shall inform Council of alternative courses of action.

## DISCUSSION

### **Staggered Terms**

The table below indicates the number of terms that require appointment for all commissions over the next four cycles. Numbers in parentheses indicate the number of incumbent commissioners eligible for reappointment at that time:

<b>Board or Commission</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
Arts	1 (1)	2 (1)	1 (1)	1 (1)
<b>Bicycle and Pedestrian Advisory</b>	<b>3</b>	<b>0</b>	<b>4 (3)</b>	<b>0</b>
Board of Building Code Appeals	2 (2)	1 (1)	0	2
Board of Library Trustees	2 (2)	1 (1)	1	1
Heritage Preservation	2 (1)	1	2 (1)	2 (1)
<b>Housing and Human Services</b>	<b>3 (2)</b>	<b>4 (3)</b>	<b>0</b>	<b>0</b>
Parks and Recreation	1	2 (2)	1	1 (1)
Personnel Board	2 (1)	1 (1)	1 (1)	1
Planning	2 (2)	1	2 (2)	2 (1)
Sustainability	2 (2)	2 (2)	2 (2)	1 (1)

The H&HS Commission has the most significant problem, with the entire commission being replaced over the span of one year. BPAC is slightly better, with half of the commission being replaced every other year. Note that the Board of Building Code Appeals has a slightly uneven distribution that could also be improved. However, given the difficulty in finding qualified and interested applicants for that commission, it may be best to leave that body untouched.

Attachment A provides the City Attorney’s analysis of Council’s ability to adjust the length of the terms of appointment in order to offset the departures of experienced members. In short, the commissions in question (including the Board of Building Code Appeals) were formed by resolution and not through the Charter, which gives Council the flexibility to make adjustments through resolution. However, the Charter only provides a term limit exemption for shortened terms that are “unexpired”. As such, shortening the length of expired terms to stagger appointments would disqualify commissioners appointed to 1 or 2 year terms from gaining an additional full second term. Such commissioners would then be limited to five or six years of consecutive service.

Both the BPAC and H&HS Commissions have seven members, which has an optimal distribution of 2, 2, 2, and 1 appointment over the next four years (in some combination). The subcommittee found the most straightforward way to achieve this is to stagger terms as follows:

<b>Appointments, Disregarding impact on Incumbent Commissioners</b>								
<b>Commission</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
BPAC now	3	0	4	0	3	0	4	0
BPAC proposed	3	0	4	1	2	2	2	1
H&HS now	3	4	0	0	3	4	0	0
H&HS proposed	3	4	1	2	2	2	1	2

This approach staggers terms by requiring the following changes to upcoming terms:

- Reduce one 2012 BPAC term from 4 years to 3 years
- Reduce two 2014 BPAC terms from 4 years to 3 years
- Reduce one 2012 H&HS term from 4 years to 2 years
- Reduce two 2014 H&HS terms from 4 years to 2 years

This has the potential to impact the length of the second term of service for some incumbents who may be reappointed. The subcommittee considered incumbency but decided that it should not be a factor in achieving term staggering.

Regardless, it is anticipated that while Council can immediately put a plan into effect, that plan may require or permit changes in 2013 or 2014, based on commission resignations that may occur. For example, should mid-term resignations occur, it may be possible to achieve the same result by shortening the partial term even more, rather than shortening a full term.

For the May 22<sup>nd</sup> 2012 appointments, the subcommittee further recommends that if 2012 terms are shortened, the City Clerk should notify applicants to the affected commissions of the change in advance of the appointment votes.

### **Commission Appointment Process**

This issue was previously discussed by Council in September of 2010, at which point it was returned to the subcommittee for further consideration. The previous findings of the subcommittee and the previous RTC are provided as a separate document.

Council policy currently dictates a process of holding an explicit voice or electronic vote for every board or commission applicant individually. However, this practice hasn't always served the best interests of the Council or the individual candidates. An appointment cycle that includes a large number of applicants can result in a long and drawn-out voting process to resolve every applicant and every commission. Council meetings requiring such a process invariably drag on unnecessarily.

Additionally, the current process can result in unnecessary embarrassment to those candidates who are not appointed. A qualified candidate may garner few or no votes through no fault of his/her own, simply because of the presence of other candidates that Council finds more qualified. But the public failure to garner votes can discourage losing but qualified candidates from making future attempts. This has a serious negative effect on candidate recruitment, particularly for the Planning Commission, where multiple application attempts are often necessary before receiving an appointment.

For all of these reasons, the subcommittee was tasked with examining the options and possibly proposing a better process.

The subcommittee discussed the following voting methods:

- 1) Retaining the current method of sequential individual voice or electronic votes
- 2) Creating an option for using commission-wide YES/NO/ABSTAIN paper ballots
- 3) Creating an option for using commission-wide RANK/NO/ABSTAIN (ranked-choice) paper ballots
- 4) Using a Council subcommittee to nominate candidates from the applicant pool.
- 5) Using Parliamentary Procedure to nominate candidates seat by seat.
- 6) Using a Council rotation process for nominations

After discussion, the subcommittee eliminated options 4-6 and focused on options 2 and 3 as alternatives to the current appointment method.

Option 2 introduces committee-wide paper ballots, similar to Council's study issues ranking process. With this method, staff provides one ballot sheet for each commission to each councilmember, with every applicant listed. Councilmembers simply mark "YES", "NO", or "ABSTAIN" for every applicant. Staff totals the votes as they do for study issues, returning to Council for subsequent tie-breaker votes if necessary. All votes for all commissions could be handled at the same time, allowing for tie-breakers. Council can still handle dependencies created by applicants interested in multiple commissions, by ordering the commissions (as is the current practice) and indicating on the ballot when a candidate becomes ineligible for appointment due to an earlier appointment.

Option 3 is similar to option 2, but ranked-choice voting is used instead of simple yes/no voting. The result is almost identical to the existing study issue voting process.

The discussion examined the change in dynamics that would be introduced by the various methods. In particular, paper ballots would alter the dynamic of Council's votes in a substantial way. Currently, since votes occur one-by-one, Councilmembers can (and sometimes do) change their intention towards later candidates based on the results of earlier votes. A paper ballot method prevents the results of an earlier vote from influencing later votes, since all votes occur simultaneously. In general, a paper ballot method causes the entire process to be much more blind and independent of extraneous influences than sequential individual candidate votes.

But most significant, a paper ballot process is possibly the fastest and most efficient method of conducting a large number of votes. However, paper ballots cannot be used during a meeting where one or more members must teleconference.

The subcommittee settled on Option 3 as its recommendation, in no small part because of its similarity to the existing study issue voting process.

The biggest concern with the paper ballot method, identified by the subcommittee, is the impact to the City Clerk. As with the study issue vote process, the City Clerk must tally the votes (which is more complicated if ranked-choice voting is done), determine the winners or identify ties, and potentially resolve dependencies when applicants express interest in multiple commissions. The subcommittee suggests that the City Clerk may need assistance in tabulating votes (perhaps from the Assistant City Manager).

It will also likely be necessary to arrange the voting order of commissions with tabulation in mind. Currently, the ordering of commissions is usually set to accommodate applicants who indicate multiple preferences. Using paper ballots, it may be necessary to intersperse the dependent commissions with non-dependent commissions, to give the City Clerk time to mark up the later ballots to indicate the unavailability of already-appointed applicants. It will also likely be necessary to break up the voting, with several commissions voted on initially, followed by a continuation of the agenda item until later in the meeting while votes are tabulated, then returning for tie-breakers or resolving other dependent commissions later in the meeting. Some of these issues and solutions already exist during the annual Study Issue Workshop.

Regardless of the method, after the top N vote-getters are identified, Council still needs to match appointees to vacancies. This can be an issue in a year where both partial and full terms need to be filled. However, that problem exists even with the current method of candidate-by-candidate votes, and Council's current practice of resolving it by a worded motion following the votes can still be used to resolve the appointments.

Note that the existing council policy works well when Council need only choose between a few candidates. It may be good practice to adopt a Council policy that gives the mayor discretion to choose between the existing method and a more streamlined method, depending on the number of applicants. The process for ranking study issues includes similar mayoral flexibility.

### **FISCAL IMPACT**

There is no fiscal impact to selectively changing terms.

There is no fiscal impact to changing the voting process for commission appointments.

### **PUBLIC CONTACT**

Public contact was made by posting the Subcommittee 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.

Additionally, this report was distributed to all Boardmembers and Commissioners prior to the subcommittee meeting.

### **ALTERNATIVES**

1. Stagger the terms for the Housing and Human Services and the Bicycle and Pedestrian Advisory Commissions to match the staggering that exists for other commissions, disregarding incumbency, by altering terms as follows:
  - a. Reduce one 2012 BPAC terms from 4 years to 3 years
  - b. Reduce two 2014 BPAC terms from 4 years to 3 years
  - c. Reduce one 2012 H&HS term from 4 years to 2 years
  - d. Reduce two 2013 H&HS terms from 4 years to 2 years
2. Stagger the terms for the Housing and Human Services and the Bicycle and Pedestrian Advisory Commissions in another manner specified by Council.
3. Direct staff to notify current applicants for the H&HS and BPAC commissions that they may be appointed to shorter initial terms of service, prior to the May 22 appointment votes.
4. Take no action regarding the staggering of H&HS and BPAC terms.
5. Modify council policy as indicated in Attachment C to permit a ranked-choice paper voting method similar to the existing study issues voting method, at the discretion of the mayor.
6. Modify council policy to permit another voting method specified by Council.
7. Maintain the existing commission appointment voting method of individual electronic or voice votes for all applicants.

The subcommittee recommends alternatives 1, 3, and 5.

Staff recommends:

**City Attorney Analysis of the Legality of Staggering Appointments Through Shortened Terms**

The Sunnyvale Charter , Art. X, Section 1000, establishes five specific commissions (Personnel Board, Planning Commission, Parks & Rec, Library Trustees, and Heritage Preservation). It also provides that "In addition, the City Council may create by ordinance or resolution such boards or commissions as in its judgment are required and may grant to them such powers and duties as are consistent with the provisions of this Charter."

The Housing & Human Services Commission was created by resolution in 1985 (reso #134-85). The BPAC was created by resolution in 1992 (reso #173-92).

Charter Section 1002 provides that "Unless otherwise provided, the members first appointed to boards and commissions composed of four members shall so classify themselves by lot that each succeeding July 1st, the term of one of their number shall expire. If the total number of the members of a board or commission to be appointed exceeds four, the classification by lot shall provide for the grouping of terms to such an extent as is necessary in order that the term of at least one member shall expire on each succeeding July 1st."

Thus, it appears to be the intention of Charter Section 1002 that the terms of board & commission members should be staggered so that at least 1 member's term expires each year. This section has been part of the Charter for many years -- the earliest version I checked was from 1949 and the language is identical.

Despite the Charter language, however, for whatever reason, the BPAC and the H&HS were set up differently. In the case of BPAC, the enabling resolution stated that of the initial 7 members, 4 would serve 4-year terms and 3 would serve 2-year terms.

The H&HS, as established in 1985, consisted of 15 members, 7 of whom were carry-overs from a predecessor commission. The enabling resolution stated that the carry-over members would finish their terms and were subsequently limited to reappointment to 2-year terms. So, the 2nd terms of these 7 members all expired in either 1988 or 1989. It is unclear from the resolution how the terms of the 8 new members would be staggered, but if they were all appointed in 1985, then their terms would presumably have expired in 1989.

Note, the Council subsequently reduced the membership of the HH&S to 9 members, then 7, through attrition and by not filling vacant positions. This process may have further changed the extent to which terms were staggered.

Because the BPAC and H&HS were established by resolution, I believe the terms of their members could be changed by resolution. The Council could appoint some members for

partial terms for several upcoming years in order to create a more staggered membership structure. This would not violate the Charter, since the BPAC and H&HS were created by resolution and their structure can be changed by resolution.

It could raise some issues, however, about how term limits will apply under Charter Section 1003 which provides "the members of such boards and commissions shall be eligible to serve no more than two successive terms on the same board or commission". There is an exception for filing an "unexpired term of not more than two years in length". However, in this situation, members would not be appointed to fill "unexpired" terms, they would be appointed to full terms that are simply shorter than normal, so term limits would probably apply to both terms and the new appointees would be at a disadvantage with regard to how many years they can serve.

David Kahn  
City Attorney  
City of Sunnyvale

Attachment B

**Sample Commission Appointment Voting Sheet For Ranked-Choice Voting**

Councilmember: \_\_\_\_\_

**Bicycle and Pedestrian Commission**

Voting is for three vacancies – two full four year terms, and one unexpired two year term.

A numeric ranking represents an affirmative vote for the candidate, with 1 representing the highest rank.

Already appointed	Name	Rank 1-12	ABSTAIN	NO
	James T. Kirk		X	
	Malcolm Reynolds	3		
	Han Solo (incumbent)	1		
	William Adama	5		
	Kathryn Janeway		X	
X	David Bowman			
	Zaphod Beeblebrox		X	
	Jean-Luc Picard	4		
	John Robinson		X	
	Roj Blake (incumbent)	2		
	John Sheridan		X	
	John Crichton		X	

**Proposed Council Policy 7.2.19 2D Language Change**

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**D. Appointment**

Appointments of board and commission members shall be placed on the agenda at a City Council meeting.

The appointment process will be conducted ~~as follows~~ according to one of the following two methods. In the event that one or more Councilmembers participate via teleconference, voting shall be done using individual candidate votes. Otherwise, the choice of methods is at the discretion of the Mayor on a commission-by-commission basis.

Individual Candidate Votes:

The Mayor will announce by board or commission each vacancy including its term, and then will read each applicant's name. Council will vote on each applicant. The candidate receiving the most affirmative votes and at least four affirmative votes will be appointed. Should no candidate receive at least four affirmative votes, the vacancy will remain. ~~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, and the affected applicants each have received at least four affirmative votes, the Mayor would ask the city attorney to draw the name of the person to be appointed.~~The process is repeated for each board or commission.

Ranked-Choice Paper Votes:

The Mayor will announce each board or commission in an order predetermined by the City Clerk to facilitate a speedy process and to accommodate applicants who specify multiple preferences. The City Clerk will distribute individual voting sheets to be completed by each Councilmember. A ranked vote shall count as an affirmative vote. The candidate receiving the highest ranking and at least four affirmative votes will be appointed. Should no candidate receive at least four affirmative votes, the vacancy will remain.

Resolving Ties:

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, and the affected applicants each have received at least four affirmative votes, the Mayor would ask the city attorney to draw the name of the person to be appointed.

If vacancies still exist after the appointment process is conducted, staff shall inform Council of alternative courses of action.



**Council Meeting: September 14, 2010**

**SUBJECT: Board and Commission Appointments Process and Resolution of Administrative Questions/Concerns (Council Policy 7.2.19, Sections 2.D and 2.J)**

**BACKGROUND**

This report addresses two sections of Council Policy 7.2.19, Boards and Commissions.

Council Policy 7.2.19, Section 2.D. provides a procedure by which Council makes appointments of new or returning members to City boards and commissions. Current administrative practice includes scheduling interviews of all eligible applicants by Councilmembers in special meeting, followed by the appointment process detailed in Council Policy 7.2.19 whereby a formal Council vote is taken on every applicant at a regular, televised meeting. The purpose of this report is to respond to a Mayoral request to explore alternative methods for appointing board and commission members.

Section 2.J of the policy addresses resolution of administrative questions and concerns. At the August 31, 2010 Council meeting, a Councilmember expressed concerns that the multi-step process mandated by Council Policy 7.2.19 Section 2.J may be an inappropriate remedy for certain concerns that may arise. Council voted 7-0 to request the Council Subcommittee to review the process through which board and commission members address questions and concerns.

The Council Subcommittee on Board and Commission Bylaws met on September 8, 2010 to review the processes listed above; their recommendations are included as Attachment C.

**EXISTING POLICY**

Charter Section 1002, *Appointments* states: "The members of each board or commission shall be appointed, and shall be subject to removal, by motion of the City Council adopted by at least four affirmative votes."

Council Policy 7.2.19, 2.D *Appointment* states: "The appointment process will be conducted as follows: The Mayor will announce by board or commission each vacancy including its term, and then will read each applicant's name. Council will vote on each applicant. The candidate receiving the most

affirmative votes and at least four affirmative votes will be appointed. Should no candidate receive at least four affirmative votes, the vacancy will remain. 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, and the affected applicants each have received at least four affirmative votes, the Mayor would ask the city attorney to draw the name of the person to be appointed. The process is repeated for each board or commission.”

Council Policy 7.2.19, 2.J. *Interaction with City Council, Public, Staff, and other Board and Commission Members* states: “Board and commission members with questions or concerns about board or commission administrative matters shall seek resolution in the following manner and sequence:

- (I) Consult your board/commission chair (If you are the chair, proceed to Step II).
- (II) If the chair is unable to satisfactorily answer your question or address your concern, or if your problem is with the chair; or if you are the chair, consult your staff liaison.
- (III) If the staff liaison is unable to satisfactorily answer your question or address your concern, (or if your problem is with the liaison), consult the department director to whom the staff liaison reports. This must be done in writing, specifying your concerns and the unsatisfactory nature of the responses received from the chair and/or the staff liaison. The department director will respond back to you in writing within 10 business days (or provide a reason why that is not possible and a specific deadline for a response).
- (IV) If the department director is unable to satisfactorily answer your question or address your concern, consult the Office of the City Clerk. All written materials identified in Step 3 must be provided to the city clerk upon initial contact with that office. You will receive a written response from the Office of the City Clerk within 10 business days (or a reason why that is not possible and a specific deadline for a response).
- (V) If the Office of the City Clerk is unable to satisfactorily answer your question or address your concern, consult the Office of the City Manager. All written materials identified in Steps 3 and 4 must be provided to the Office of the City Manager upon initial contact with that office. You will receive a written response from the Office of the City Manager within 10 business days (or a reason why that is not possible and a specific deadline for a response).
- (VI) If the Office of the City Manager is unable to satisfactorily answer your question or address your concern, consult the Mayor’s Office. All written materials identified in Steps 3, 4, and 5 must be provided to the Mayor. You will receive a written response from the Mayor’s Office within 10 business days (or a reason why that is not possible and a specific deadline for a response).

## **DISCUSSION**

### I. Board and Commission Appointments Process -- Section 2.D

Cities use a variety of methods of making appointments to City boards and commissions based on the needs of the city and preferences of city councils, balanced with the requirements of codes and statutes. Of the myriad of ways the appointment process can be conducted, some present benefits which are worthy of consideration for their capacity to promote greater efficiency in the use of Council and staff time and resources. Several methods are highlighted below and compared in the attached table. Staff filtered out options that would require a change to the Charter based on the time and expense required to implement.

#### A. Appointments using the current method

As stated above, the current practice requires scheduling a special council meeting to conduct interviews of all eligible applicants by all Council able to attend. At a subsequent open and public Council meeting a formal Council vote is taken on *every* applicant.

While this method provides every applicant an opportunity to be interviewed by the full Council and to receive an individual up-or-down vote, it can be time-consuming and inefficient. When a large number of applications are received, the interview process can require several special Council meetings and the appointment process during regular meetings can be lengthy. The process of allowing each Councilmember to vote on multiple applicants for one seat often creates a tie between two or more applicants and it becomes necessary to take a second vote to break the tie, and potentially the need to use a third procedure to break a continuing tie. The formal interview by the full Council may be intimidating to some applicants, and the vote procedure may be embarrassing to those who receive fewer or no affirmative votes.

#### B. Current method modified to use Parliamentary Procedure for nominations.

The current practice of conducting interviews by the full Council in a special meeting could be retained, with a modification made to streamline the appointment process by making nominations according to Parliamentary Procedure during the Council meeting. The Mayor would open nominations for a particular seat on a board or commission. After all nominations for the seat were made, the Mayor would close nominations for that seat, and a motion to appoint would be taken on each nominee in the order nominated. The first nominee for a seat to receive four affirmative votes would be appointed.

Alternatively, if the number of nominees were fewer than or equal to the number of available and similar seats on a particular board or commission, a motion could be made to simply appoint some or all of the nominees. The slate

of nominees would be appointed by motion adopted by at least four affirmative votes.

#### C. Nominations by a Council subcommittee

This method provides for a Council subcommittee to nominate applicants for board and commission seats, to be presented to the full Council for appointment by motion adopted by at least four affirmative votes pursuant to the Charter. Applications would be pre-screened by staff, as they currently are, for minimum qualifications. Applications of those qualified would then be forwarded to a Council subcommittee which would screen the applications and select the applicants to be interviewed. The Council subcommittee would meet in an open and public meeting to interview the applicants. The Council subcommittee would select a single slate of nominees (i.e. one nominee for each available seat) to submit to the full Council for appointment by motion adopted by at least four affirmative votes.

Councilmembers would be selected to serve on the Council subcommittee, or nominating committee, annually as part of the IGR Assignments process.

This method provides a streamlined process by which applications would be screened, selected applicants would be interviewed by Council subcommittee, nominations would be made by the Council subcommittee, and appointments would be made by the full Council by motion adopted by at least four affirmative votes.

#### D. Nominations by Council rotation

Under this method, nominations are made by each Councilmember on a rotating basis, to be submitted to the full Council for appointment by motion adopted by at least four affirmative votes, pursuant to the Charter. As with the methods described above, applications would be pre-screened by staff to assure applicants meet the minimum qualifications. All applications for one available seat on a board or commission would be forwarded to one Councilmember on a pre-determined rotation schedule. The Councilmember whose turn it is to make a nomination would screen the applications, interview selected applicants, and nominate one applicant for the available seat. For the next vacant seat, this process would roll over to the next Councilmember on the rotation schedule, and the next, until one nomination has been made for each available seat. Rotation of Councilmembers would be done for each board and commission. All nominations would be presented to the full Council for appointment by motion adopted by at least four affirmative votes.

Appointments by Council rotation provides an alternative process by which applications are screened, selected applicants are interviewed, and nominations are made by each Councilmember on a rotating basis, for appointment by the City Council pursuant to the Charter.

## II. Resolution of Administrative Questions/Concerns -- Section 2.J

There are a variety of concerns that may arise for a commissioner, including but not limited to concerns about an agenda or individual agenda item, concerns about legal aspects of a meeting or an individual commission action, difficulties dealing with fellow commissioners, difficulties with the staff liaison or more senior staff, problems with a member of the public, and even problematic interactions with councilmembers. A concern was expressed by a councilmember that the existing policy may be too cumbersome or even inappropriate for dealing with some issues that may arise.

Staff has clarified that the original intent of Section 2 J. was to deal with operational or administrative matters under the jurisdiction of the City Manager, and not to address concerns that a board or commission member might have with fellow Commissioners, a Councilmember, or policy-related issues not under the jurisdiction of the City Manager. Staff agrees that clarification to this effect would be beneficial, and suggests that the process for addressing concerns with operational/administrative issues should be removed from the Council Policy Manual and added to the City's Administrative Manual.

### **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.

This report was provided to all board and commission members as information only.

### **ALTERNATIVES**

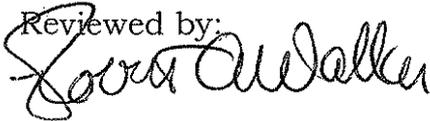
1. Make no changes and retain the current method of interviews and appointments (Option A).
2. Retain the current method of conducting interviews by the full Council, and approve development of policy and procedures to modify the appointment procedure to provide for Council to nominate applicants according to Parliamentary Procedure for appointment by motion of the City Council adopted by four affirmative votes (Option B).
3. Approve development of policy and procedures for a Council subcommittee to nominate applicants for boards and commissions to submit to the City Council for appointment by motion adopted by four affirmative votes (Option C).

4. Approve development of policy and procedures for each Councilmember on a rotating schedule to nominate an applicant for the next available seat of a particular board or commission to submit to the City Council for appointment by motion adopted by four affirmative votes (Option D).
5. Consider the Council subcommittee's recommendations regarding Sections 2.D and 2.J of Council Policy 7.2.19
6. Remove from Council Policy 7.2.19 the detailed description of how to address board and/or commission concerns with City operations or administrative matters.
7. Other direction as provided by Council.

**RECOMMENDATION**

Staff recommends Alternatives 5 and 6.

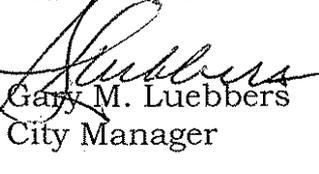
Reviewed by:



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City Manager

**Attachments**

- A. Table: Alternative Methods of Making Appointments of Board and Commission Members
- B. Council Policy 7.2.19, *Boards and Commissions*
- C. Council Subcommittee Report of September 8, 2010

**Attachment A**

## Alternative Methods of Making Appointments of Board and Commission Members

Option	General procedure	Applications Screened by:	Interviews Conducted by:	Nominations Made by:	Appointment Made by:	Vote Process (during a regular Council meeting):
A	<p>Full City Council interviews <i>all</i> applicants in special meeting;</p> <p>Full Council votes on every applicant during a regular Council meeting.</p>	Pre-screened by staff for minimum qualifications	Full Council	n/a	City Council	Vote on every applicant; four affirmative votes appoints unless tied; repeat for ties; random drawing to break 2 <sup>nd</sup> tie.
B	<p>Full City Council interviews <i>all</i> applicants in special meeting;</p> <p>Full Council votes on <i>nominations</i> made according to Parliamentary Procedure during Council meeting.</p>	Pre-screened by staff for minimum qualifications	Full Council	Councilmember s nominate applicants according to Parliamentary Procedure during Council meeting	City Council	Vote on each nominee in order nominated; 1st to receive four affirmative votes is appointed; or if number of nominees is fewer than or equal to the number of seats, a motion to appoint some or all nominees could be adopted by at least four affirmative votes.
C	<p>Council Subcommittee interviews and nominates applicants in Subcommittee meeting(s);</p> <p>Full Council votes on Subcommittee's nominees during regular Council meeting.</p>	<p>Pre-screened by staff for minimum qualifications;</p> <p>Screened by Council Subcommittee to select those to be interviewed</p>	Council subcommittee	Council Subcommittee	City Council	Council appoints Subcommittee's slate of nominees by motion adopted by at least four affirmative votes.
D	<p>Council rotation: each Councilmember takes a turn interviewing and nominates one applicant for the next available seat of a particular board or commission; the Councilmember's turn rotates to next Councilmember per rotation schedule for next available seat; Full Council votes on slate of nominees during regular meeting.</p>	<p>Pre-screened by staff for minimum qualifications;</p> <p>Screened by Councilmember whose turn it is, per rotation schedule</p>	Councilmember whose turn it is, per rotation schedule	Councilmember whose turn it is, per rotation schedule	City Council	Council appoints each Councilmember's nominee(s) by motion adopted by at least four affirmative votes.

**Attachment B**

## **Policy 7.2.19 Boards and Commissions**

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### **POLICY PURPOSE:**

The purpose of this policy is to outline those Council policies pertaining to the City's Boards and Commissions Program.

### **1. POLICY STATEMENT:**

This policy pertains only to Council-appointed boards and commissions. Many of its provisions are rooted in the City Charter, and where any conflict exists between this policy and the City Charter, the City Charter shall prevail.

- A. Boards and commissions are created by the City Council for the following general purposes:
  - (I) To recommend to City Council specific policy-related issues for possible Council study and action, and to provide a forum and opportunity for broad community participation in the identification and prioritization of those issues; and
  - (II) To advise City Council on specific policy issues Council has chosen to study, and to provide a forum and opportunity for broad community input on those issues.
  - (III) See also Section 2.I, Duties.
- B. Boards and commissions shall not involve themselves in administrative/operational matters or the implementation of Council policy, except as requested by the city manager or his/her designated staff. (See also Section 2.I., Duties.)

### **2. BOARD AND COMMISSION BYLAWS**

- A. The City maintains ten Council-appointed boards and commissions:
  - (I) Arts Commission: This five-member commission acts in an advisory capacity to the City Council in matters pertaining to the arts and the development and promotion of arts programs and activities. Meetings are held on the third Wednesday of each month at 7 p.m. in the Council Chambers at City Hall.
  - (II) Bicycle and Pedestrian Advisory Commission: This seven-member commission acts in an advisory capacity to the City Council on bicycle and pedestrian issues. Meetings are held on the third Thursday of each month at 6:30 p.m. in the West Conference Room at City Hall.
  - (III) Board of Building Code Appeals: formed by Municipal Code Ordinance 1315. This five-member board has final decision-making authority in all appeals related to building construction, including interpretation of building codes. Meetings are held only as necessary, on the third Wednesday of the month at 6 p.m. in the West Conference Room at City Hall.
  - (IV) Board of Library Trustees: formed by City Charter Section 1013. This five-member board acts in an advisory capacity to the City Council on library related

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issues. Meetings are held on the first Monday of each month at 7 p.m. in the Library Program Room. If the first Monday is a City observed holiday, the meeting will be held on the second Monday of the month in the Library Program Room.

- (V) Heritage Preservation Commission: formed by City Charter Section 1015. This seven-member commission acts in an advisory capacity to the City Council and has certain decision-making authority on the restoration, maintenance and operation of heritage resources throughout the City. Meetings are held on the first Wednesday of every other month beginning in January (and on the first Wednesday of alternate months when needed) at 7 p.m. in the West Conference Room at City Hall.
- (VI) Housing and Human Services Commission: This seven-member commission acts in an advisory capacity to the City Council on programs, policies, and other issues regarding housing and human services. Meetings are held on the fourth Wednesday of each month at 7 p.m. in the West Conference Room at City Hall.
- (VII) Parks and Recreation Commission: formed by City Charter Section 1011. This five-member commission acts in an advisory capacity to the City Council in matters and services pertaining to parks, open space, playgrounds, entertainment, other cultural and recreational activities. Meetings are held on the second Wednesday of each month at 7 p.m. in the Council Chambers at City Hall.
- (VIII) Personnel Board: formed by City Charter Section 1007. This five-member board acts in an advisory capacity to the City Council and city manager in matters pertaining to personnel administration. Meetings are held only as necessary, on the third Monday of each month at 5 p.m. in the Council Chambers at City Hall.
- (IX) Planning Commission: formed by City Charter Section 1009. This seven-member commission acts in an advisory capacity to the City Council and has some decision-making authority on land use and development of the City. Meetings are held on the second and fourth Monday of each month at 8 p.m. in the Council Chambers at City Hall.
- (X) Sustainability Commission: This five-member commission acts in an advisory capacity to the City Council to provide expertise on major policy areas related to the environmental sustainability goals of the Climate Action Plan (CAP) and General Plan. Meetings are held bi-monthly beginning in January on the third Monday of each month at 7 p.m. in the West Conference Room at City Hall. If the third Monday is a City observed holiday, the meeting will be held on the third Tuesday of the month at 7 p.m. in the West Conference Room.

### **B. Eligibility and Membership**

No board or commission members shall hold any paid office or employment in the City Government. All persons appointed shall be registered voters of the City and shall maintain their principal place of residence within the City at the time of their appointment (exception: Bicycle and Pedestrian Advisory Commission, Category Two, per Section 2. D. I (b) (ii)). If at any time during their term any member of a board or commission shall cease to be an elector of the City or shall cease to maintain their principal place of

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residence within the City, then such person shall become ineligible to continue to serve as a member of the board or commission and said position shall be declared vacant by the City Council.

### (I) Spouses, Household Members, and Relatives

No individual shall be eligible to serve on a City board or commission, chartered or otherwise, who has a spouse, household member living under the same roof, or designated relative (parent, step-parent, grandparent, child, sister, brother, niece, nephew, uncle, or aunt of the individual or of the individual's spouse), currently serving as a member of the City Council, or employed as the city manager, assistant city manager, assistant to the city manager, city attorney, department director or assistant director or equivalent for the City of Sunnyvale.

### (II) Concurrent Service

No member of any board or commission listed herein, chartered or otherwise, may serve on more than one board or commission at the same time.

#### (a) Exception:

Members of the Board of Building Code Appeals may serve on another board or commission at the same time.

### (III) Specific membership requirements for charter-related Boards and Commissions are as follows:

#### (a) Board of Building Code Appeals:

To be eligible for appointment, each appointee shall be qualified by experience and training to pass upon matters pertaining to building construction. *(Source: Municipal Code Chapter 16.08)*

#### (b) Personnel Board:

To be eligible for appointment, each appointee shall neither hold public office or employment nor be a candidate for any other public office or position, nor be a former City employee. *(Source: City Charter Section 1007)*

No individual shall be eligible to or continue to serve on the Personnel Board who has a spouse, household member, or designated relative (parent, step-parent, grandparent, child, sister, brother, niece, nephew, uncle, or aunt of the individual or of the individual's spouse), employed by the City of Sunnyvale *in a position which has the right to have a disciplinary matter heard before the Personnel Board.*

Two of the five members shall be appointed by the City Council from a list of five persons to be nominated by election of the employees in the classified service. *(Source: City Charter Section 1007)*

#### (c) Planning Commission:

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To be eligible for appointment, each appointee shall not hold any paid office or employment in the City government, *except that the city manager or his/her designated representative, shall serve as an ex-officio member of the Commission.* (Source: City Charter Section 1009)

**(IV) Specific membership requirements for non-charter-specified Boards and Commissions are as follows:**

**(a) Arts Commission:**

The members of this commission shall have a demonstrated interest in the arts (such as visual, performing, literary) and in the art programs of the City. It is preferable that the Arts Commission include at least one member with a background in visual arts and at least one member with a background in performing arts.

**(b) Bicycle and Pedestrian Advisory Commission**

The members of the commission shall be selected from two categories:

- i. Category One (four members) shall be bicyclists or pedestrians in the City of Sunnyvale. Every person in this category shall, at the time of his or her appointment, be a registered voter of the City and shall maintain his or her principal place of residence within the City. Should any person so appointed cease to be an elector of the City or cease to maintain his or her principal place of residence within the City, that person shall be ineligible to continue to serve as a member of the commission.
- ii. Category Two (three members) shall include members of the PTA or other parent groups, administrations of schools in Sunnyvale, commute coordinators for major employers within the City, members of neighborhood associations, principals or teachers from Sunnyvale schools or persons interested in park and recreational activities in the City.

**(c) Housing and Human Services Commission:**

The members of the Housing and Human Services Commission shall have a demonstrated interest in housing or human services issues.

**(d) Sustainability Commission**

The Sustainability Commission shall be open to individuals with a demonstrated interest in environmental sustainability issues. The members of the commission shall be selected from two categories:

- i. Category One (minimum of three members) shall be Sunnyvale registered voters.
- ii. Category Two (minimum of one member) shall include members of the Sunnyvale business community. Such members need not be Sunnyvale residents.

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### (V) **Limitation on Terms**

Any person appointed to a board or commission shall be immediately eligible, upon the expiration of their term or resignation prior to completion of their term if appointed to a different board or commission, to serve on a different board or commission.

All board and commission members are eligible to serve two successive four-year terms on the same board or commission. No person who has served two such successive four-year terms shall be eligible for appointment to that same board or commission for two years following the expiration of the second full term for which the member was appointed and served. Serving an unexpired term of up to 2 years in length shall not count toward years served in terms of eligibility.

### C. **Recruitment**

Through the Office of the City Manager, efforts will be made to fill board or commission vacancies as soon as practical. Upon notification of a vacancy, whether planned or unplanned, staff shall inform Council of the status of recruitment efforts to fill the vacancy.

### D. **Appointment**

Appointments of board and commission members shall be placed on the agenda at a City Council meeting.

The appointment process will be conducted as follows:

The Mayor will announce by board or commission each vacancy including its term, and then will read each applicant's name. Council will vote on each applicant. The candidate receiving the most affirmative votes and at least four affirmative votes will be appointed. Should no candidate receive at least four affirmative votes, the vacancy will remain. 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, and the affected applicants each have received at least four affirmative votes, the Mayor would ask the city attorney to draw the name of the person to be appointed. The process is repeated for each board or commission.

If vacancies still exist after the appointment process is conducted, staff shall inform Council of alternative courses of action.

#### (I) **Exception:**

##### (a) **Board of Building Code Appeals**

- i. In the event an appeal to be heard by the Board of Building Code Appeals is filed and the board lacks a quorum, the Director of Community Development shall select a temporary board member(s) to hear such an appeal. Any temporarily appointed

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board member(s) shall hear no more than three appeals within 12 months and shall meet all eligibility requirements as described in this policy.

### **E. Oath of Office**

Each board and commission member, before entering upon the discharge of the duties of his/her office, shall sign the City's Code of Ethics document and take, subscribe to, and file with the city clerk the following oath or affirmation:

"I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of the office of (here inserting the name of office) according to the best of my ability." (*Source: City Charter Section 910*)

After taking the Oath of Office and signing the Code of Ethics in the Office of the City Clerk, each board and commission member shall have the opportunity to receive a ceremonial Oath of Office at a regularly scheduled Council meeting.

### **F. Required Training/Conferences and Disclosure Obligations**

- (I) Mandatory training shall be provided to all board and commission members by the City through the Office of the City Manager, including an orientation session for new members. Training shall be delivered as deemed necessary by the Council and/or city manager and may include topics germane to a specific board or commission and/or training generic to all boards and commissions (e.g. ethics training or "how to run a meeting" for board and commission chairs).
- (II) Conferences are conducted periodically by outside groups to assist members of boards and commissions in meeting their respective responsibilities more effectively. The City's interests are often served by participation in the educational and training programs offered at the conferences. Each member of City boards and commissions may attend related training and/or conferences, provided that the conference subject matter pertains directly to the function of the board and commission and that funds for this purpose have been budgeted.
- (III) Designated boards and commissions are subject to conflict of interest provisions of the Political Reform Act and must file Statements of Economic Interests. Statements must be filed within 30 days of taking office and thereafter annually, as well as upon leaving office.

California Government Code Section 87200 (the Political Reform Act) specifically applies to:

- Members of the Planning Commission

The City's Conflict of Interest Code requires appointees of designated boards and commissions to file Statements of Economic Interests. The City's Conflict of Interest Code designates members of the following boards and commissions to file Statements of Economic Interests:

- Members of the Board of Building Code Appeals

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- Members of the Heritage Preservation Commission

### G. Officers

#### (I) Selection of Chair and Vice Chair

Unless otherwise dictated by City Charter, each board and commission shall, within the month of July each year, elect one of its members as presiding officer, to serve following mandatory chair training. The selection of chair and vice chair shall be the last item on the agenda at the scheduled meeting. All boards and commissions shall select their chair and vice chair in accordance with practices and procedures outlined by the Office of the City Clerk.

#### (II) Chair's Role and Responsibilities

- Attends training in how to be an effective chair prior to assuming the role.
- Presides at meetings of the board or commission, and follows Brown Act requirements for conducting meetings.
- Serves as a liaison to Council at City Council meetings.
- Coordinates the scheduling of special meetings or cancellation of a meeting with the staff liaison.
- Coordinates the setting of the agenda with the staff liaison. Should the chair and the staff liaison disagree regarding the agenda, the city manager shall have final authority subject to appeal to the City Council.
- Board and commission chairs are encouraged to attend Council meetings (or to appoint an alternate on either a case by case or long-term basis) for the purpose of representing the official position (including both the majority and the minority opinions) of the board or commission. The chair shall report back to their board or commission on Council's discussion and ultimate decision.
- Counsels and administers verbal reprimands and written warnings to board and commission members who do not comply with City policy.

#### (III) Vice Chair's Role and Responsibilities

- Attends training in how to be an effective vice chair prior to assuming the role.
- Serves as the presiding officer in the absence of the chair.

### H. Meetings, Attendance and Quorums (see also Council Policy 7.3.8 Posting of Agendas and Procedure for Confirming Proper Posting and Notice of Meetings)

#### (I) Meetings

Each board and commission shall hold regular meetings and special meetings as it may require. All meetings shall be open to the public and meet Brown Act requirements (with the exception of certain disciplinary review proceedings of the Personnel Board).

All board and commission meetings shall operate under Parliamentary Procedure. Should this policy and Parliamentary Procedure conflict, this policy shall take precedence.

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### (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

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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.

### (III) Quorums

Boards and commissions have a quorum when a majority of their current membership is present. "Current membership" is defined as the official membership, less any seats that are formally vacant through resignation, unfilled vacancy or removal.

### (IV) Majority and Abstentions

Board and/or commission motions shall be approved by a majority of legal votes cast. Members who fail to vote are presumed to have waived the exercise of their right and to have consented to allow the will of the organization to be expressed by those voting. The tabulation of a vote is based on the number of members present *and* voting. Abstentions are not counted, since a member who abstains voluntarily relinquishes his or her vote, and is not counted in the results. (*Source: The Standard Code of Parliamentary Procedure, 4<sup>th</sup> Edition*)

### (V) Ad-hoc Committees

Ad-hoc committees may be established as required to facilitate the study of Council-directed or staff-requested initiatives. These committees will be project-specific and will function only for the duration of the project.

## I. Duties

Aside from obligations related to attendance and training noted elsewhere in this policy, the general duties for all board and commission members are:

### (I) General Duties

#### (a) Work Plans

Each board and commission shall create an Annual Work Plan which is a 12-month calendar of the policy issues the board/commission will be acting on during the year.

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### (b) Study Issues Process

The Study Issues process is designed to assist City Council with setting priorities for the coming calendar year. Board and commission members have two roles in this process:

- To advise Council regarding the identification of policy issues to study
- To advise Council on those issues Council has decided to study

Within one month of origin, new study issue papers sponsored by Council or a board or commission will be presented to respective boards or commissions, or at the next regular meeting of the respective board or commission.

### (c) Budget

Board and commission members have two roles in the budget process:

- To advise Council regarding the identification of budget issues
- Provide Council a recommendation regarding the city manager's recommended budget for content under the purview of their board or commission.

### (d) Operational Issues

Board and commissions may serve as advisory bodies to staff regarding operational issues upon request by staff.

## (II) Specific Duties

### (a) Arts Commission

- i Review those portions of master plans of park or facility development or expansion which relate to the arts, for adequacy, appearance and other appropriate criteria, in an attempt to ensure good design and then make recommendations to City Council.
- ii Review and make recommendations on the Arts Sub-Element of the General Plan.
- iii Review and make recommendations regarding agreements with arts-related outside groups and recommend funding allocations.
- iv Make policy recommendations regarding the purchase of art for public buildings and for art in private development in accordance with Council Policy 6.4.3. *Art in Private Development*.
- v Study the regional and state Arts Master Plans and make recommendations to the City Council.

### (b) Bicycle and Pedestrian Advisory Commission

- i Recommend priorities for bicycle and pedestrian projects for the annual TDA Article 3 funding application cycle.
- ii Participate in periodic review and revision of the Bicycle Plan and Map.

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- iii Review and make recommendations on changes to the Sunnyvale Municipal Code related to bicycles and pedestrians.
  - iv Review and make recommendations on Federal, State and regional policy proposals related to bicycles and pedestrians.
  - v Develop recommendations on promotion of bicycling and walking as viable, sustainable means of transport.
  - vi Review and make recommendations on the applicable sections of the General Plan.
- (c) Board of Building Code Appeals
- i Consider and make determinations on appeals of building code decisions made by the Chief Building Official or Fire Marshal. *(Source: Sunnyvale Municipal Code Chapter 16.16.020)*
  - ii Consider and make determinations on appeals of green building requirements made by the director of community development. *(Source: Sunnyvale Municipal Code Chapter 19.39)*
- (d) Board of Library Trustees
- i Review and make recommendations on the Library Sub-Element of the General Plan.
  - ii Assess community conditions which affect Library goals and policies.
  - iii Review and make recommendations regarding agreements with outside groups and recommend funding allocations.
- (e) Heritage Preservation Commission
- i Act in an advisory capacity to the City Council in all matters pertaining to heritage resources, landmark sites and landmark districts. *(Source: City Charter Section 1016)*
  - ii Exercise such functions with respect to any heritage resource, landmark site or landmark district as may be prescribed by ordinance. *(Source: City Charter Section 1016)*
  - iii Decision-making authority on resource alteration permits and landmark alteration permits as well as actions to remove a heritage resource from the list of heritage resources. These decisions are final unless appealed to the City Council.
  - iv Final decision-making authority on appeals of staff decisions of minor landmark and resources alteration permits.
  - v Recommendations to City Council on new heritage resource and landmark sites and districts (including buildings, landscapes, and other artifacts that are considered significant in Sunnyvale's history).
  - vi Recommendation to the City Council on Heritage Housing and other heritage zoning districts.
  - vii Participation in the development and promotion of museums and City archives.
- (f) Housing and Human Services Commission
- i Review and make recommendations on the Housing and Community Revitalization Sub-Element and Socioeconomic Element of the General Plan.

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- ii Review proposed funding policies and grant applications by eligible housing and human service\* agencies for Community Development Block Grant (CDBG) HOME and/or other available funds for public services and/or housing projects, and make funding recommendations to Council in response to the proposals received.
- iii Hold public hearings on draft HUD Consolidated Plans and Annual Action Plans to receive public input and provide recommendations to Council regarding the content of those plans.
- iv In the interest of efficiency and certainty of the land use planning and development process, the Housing and Human Services Commission shall not be involved formally in matters within the responsibility of the Sunnyvale Planning Commission, as defined by State law and the Charter and ordinances of the City of Sunnyvale, in any manner that would delay or interfere with consideration of land use permit applications or legislative decisions affecting particular properties. The commission shall not be formally involved in issues pertaining directly to current or future human services programs which are directly provided by, co-sponsored by, or relate directly (in the case of outside funding) to the programs provided by City departments for which the Council has established an advisory board or commission, unless dual responsibility therefore is explicitly authorized by a City Council-approved Agenda Calendar or work plan.
- v Study, evaluate and recommend policies relating to human rights and human relations issues related to housing and human services\* in Sunnyvale.

\*human services as defined by Council Policy 5.1.3

- (g) Parks and Recreation Commission
  - i Study, evaluate and recommend to the City Council policies relating to parks and recreation activities, such as:
    - Community center use policy
    - Park building use policy
    - Picnic facility use policy
    - License agreements
  - ii Review master plan of park development or expansion for adequacy, appearance and other appropriate criteria in an attempt to assure good design and make recommendations to the Council.
  - iii Review and make recommendations regarding agreements with parks and recreation related outside groups and recommend funding allocations.
  - iv Study, evaluate and recommend to the City policies relating to human rights and human relations issues that may arise when addressing issues such as inclusion in the use of City parks and recreation facilities, program accessibility and cultural diversity.

- (h) Personnel Board

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- i Hear appeals of any officer or employee in the Classified Service who is reclassified, suspended, demoted or removed, and report its finding to the City Council and City Manager; the findings and conclusions of the Personnel Board shall be final and no appeal may be taken therefrom. *(Source: City Charter Section 1008)*
  - ii After a public hearing thereon, recommend to the City Council the adoption, amendment or repeal of the civil service rules and regulations. *(Source: City Charter Section 1008)*
  - iii Perform such other duties with reference to personnel administration, not inconsistent with this Charter, as the City Council may require by ordinance. *(Source: City Charter Section 1008)*
- (i) Planning Commission
- i After a public hearing thereon, recommend to the City Council the adoption, amendment, or repeal of Master, General, or Precise Plans, or any part thereof, for the physical development of the City. *(Source: City Charter Section 1010)*
  - ii Exercise such functions with respect to land subdivisions, planning, and zoning as may be prescribed by ordinance. *(Source: City Charter Section 1010)*
  - iii Exercise such other functions as now or may be hereafter authorized by the provisions of Title 7 entitled "Planning" of the Government Code of California, or as hereafter amended or added to, insofar as they do not conflict with the provisions of the Charter. *(Source: City Charter Section 1010)*
  - iv Decision-making authority on a variety of discretionary land use applications (e.g. use permits, special development permits, variances, specified design reviews, tentative maps and appeals of decisions of the Zoning/Administrative Hearing Officer). These decisions are final unless appealed to the City Council.
  - v Final decision-making authority on appeals of staff decisions on minor land use applications (e.g. Tree Removal Permits, Miscellaneous Plan Permits).
  - vi Provide recommendations to City Council on legislative actions such as zoning code amendments, rezoning of property, amendments to the General Plan, and new and revised specific plans as well as related applications considered at the same time as a legislative action.
  - vii Review and make recommendations on the entire General Plan (all Elements and Sub-elements) as updates and amendments are considered.
  - viii Review and act on environmental documents in compliance with the California Environmental Quality Act (CEQA), when related to any of the above actions.
- (j) Sustainability Commission
- i. Advise Council on policy issues addressing sustainability goals.
  - ii. Advise Council on how to strategically accelerate Sunnyvale's progress towards sustainability and recommend priorities, in order to promote continued regional leadership in sustainability.

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- iii. Periodically review policies governing specific practices, such as greenhouse gas (GHG) emissions reduction, water conservation, renewable energy, energy efficiency, waste reduction, and urban forestry. Illustrative examples include creation of infrastructure for low emission vehicles, habitat restoration and conservation, biodiversity preservation, and reduction of toxics in the waste stream.
- iv. Advise Council on ways to drive community awareness, education, and participation in best practices.
- v. Review and make recommendations to Council on Federal, State and regional policies related to sustainability which impact Council's goals and policies.

### (III) Additional Duties

Additional duties may be conferred upon specific boards and/or commissions by the City Council. These shall be memorialized via the City Charter or by revision to this policy.

### J. Interaction with City Council, Public, Staff, and other Board and Commission Members

The city manager shall appoint a staff liaison to support each board and commission.

In addition to their role as advisors to the Council, boards and commissions serve as liaisons between the City and the general public regarding issues under their purview at City sponsored meetings or events. Each board and commission functions as a communication link between the community and the City, explaining City programs and recommendations, advocating established City policy and services, as well as providing a channel for citizen expression.

Outside of official board or commission meetings, individual board and commission members are not authorized to represent the City or their board or commission unless specifically designated by the Council or the board or commission to do so for a particular purpose. In private settings, board and commission members may communicate at any time and on any subject with individual members of the City Council, and may express to them individual viewpoints and opinions. In public, however, all members shall represent the official policies or positions of their board or commission, with the following exception: during a Council public hearing on any item addressed by the board or commission, any member may speak under standard time limits, but shall indicate whether their testimony represents an official position (majority opinion) or a minority opinion of the board/commission to which they belong. The chair shall represent the majority view of the board or commission, but may report on any minority views as well, including his or her own. When an official board or commission position differs from staff's recommendation on a particular policy issue, then at the Mayor's discretion additional time may be provided to the chair of the board or commission (or his/her designee) to explain the position of the board/commission or to rebut statements made by staff or the public. If new information is brought to light during a public hearing which was not shared previously with the board or commission, the Mayor may allow the board or commission chair to respond. If the Council deems the new information sufficient to warrant additional study, then by majority vote Council may remand the issue back to the

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board or commission for further study prior to taking other action itself. (*Source: Code of Ethics and Conduct for Elected and Appointed Officials*)

Individual opinions and positions may be expressed by board and commission members regarding items that have not come before the particular board/commission to which they belong. When presenting their individual opinions and positions, members shall explicitly state they do not represent their body or the City of Sunnyvale, nor will they allow the inference that they do. (*Source: Code of Ethics and Conduct for Elected and Appointed Officials*)

Although a board or commission may disagree with the final decision the Council makes, the board or commission shall not act in any manner contrary to the established policy adopted by the Council. (*Source: Code of Ethics and Conduct for Elected and Appointed Officials*)

Board and commission members shall adhere to the City's Code of Ethics and Conduct for Elected and Appointed Officials. Council conduct with boards and commissions is also covered in the City's Code of Ethics and Conduct for Elected and Appointed Officials.

Council shall be kept informed of the activities of boards and commissions by virtue of the board and commission minutes.

Council shall consider joint study sessions with boards and commissions as warranted. Council shall encourage members of the public to submit issues and/or concerns to the appropriate board or commission prior to Council considering the matter. (*Source: Community Engagement Sub-Element 7.2C.5(a)*)

Board and commission members with questions or concerns about board or commission administrative matters shall seek resolution in the following manner and sequence:

- (I) **Consult your board/commission chair** (If you are the chair, proceed to Step II).
- (II) If the chair is unable to satisfactorily answer your question or address your concern, or if your problem is with the chair; or if you are the chair, **consult your staff liaison**.
- (III) If the staff liaison is unable to satisfactorily answer your question or address your concern, (or if your problem is with the liaison), **consult the department director** to whom the staff liaison reports. **This must be done in writing**, specifying your concerns and the unsatisfactory nature of the responses received from the chair and/or the staff liaison. The department director will respond back to you in writing within 10 business days (or provide a reason why that is not possible and a specific deadline for a response).
- (IV) If the department director is unable to satisfactorily answer your question or address your concern, **consult the Office of the City Clerk**. **All written materials identified in Step 3 must be provided to the city clerk** upon initial contact with that office. You will receive a written response from the Office of the City Clerk within 10 business days (or a reason why that is not possible and a specific deadline for a response).
- (V) If the Office of the City Clerk is unable to satisfactorily answer your question or address your concern, **consult the Office of the City Manager**. **All written materials identified in Steps 3 and 4 must be provided to the Office of the**

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**City Manager** upon initial contact with that office. You will receive a written response from the Office of the City Manager within 10 business days (or a reason why that is not possible and a specific deadline for a response).

- (VI) If the Office of the City Manager is unable to satisfactorily answer your question or address your concern, **consult the Mayor's Office. All written materials identified in Steps 3, 4, and 5 must be provided to the Mayor.** You will receive a written response from the Mayor's Office within 10 business days (or a reason why that is not possible and a specific deadline for a response).

### **K. Recognition**

An annual event to recognize the service of all board and commission members, as well as citizens serving on special Council ad-hoc committees, shall be coordinated through the Office of the City Manager.

Outgoing board and commission members who have served their full term shall receive a certificate of appreciation and a small memento of appreciation. The type of certificates and mementos provided are at the discretion of the Office of the City Manager, shall not exceed the gift limit established by the Fair Political Practices Commission in effect at the time, and will be suitable for the occasion.

### **L. Resignation/Completion of Term**

When a board or commission member resigns from his or her seat, the member shall notify the Mayor in writing (email, fax or letter), with copies to the staff liaison, city clerk and city manager, indicating the effective date and the reason(s) for resignation. When the resignation notice is received by the Office of the City Clerk, staff shall notify Council of the resignation and the status of recruitment efforts to fill the vacancy. Upon resignation or completion of board or commission assignment, individuals shall not represent themselves further as a board or commission member.

### **M. Sanctions**

Counseling, verbal reprimands and written warnings may be administered by the Mayor to board and commission members failing to comply with City policy. These lower levels of sanctions shall be kept private to the degree allowed by law. Copies of all written reprimands administered by the Mayor shall be distributed in memo format to the chair of the respective board or commission, the city clerk, the city attorney, the city manager, and the City Council. Written reprimands administered by the Mayor shall not be included in packets for public meetings and shall not be publicized except as required under the Public Records Act. (*Source: Code of Ethics and Conduct for Elected and Appointed Officials*)

Any form of discipline involving formal censure, or affecting board or commission member status (i.e., removal from office or removal of chairperson status), shall be imposed by a majority vote of at least a quorum of the Council at a noticed public meeting and such action shall be preceded by a Report to Council with supporting documentation. The Report to Council shall be distributed in accordance with normal procedures, including hard copies to numerous public facilities and posting online. Any Report to Council addressing alleged misconduct by a board or commission member shall be routed through the Office of the City Attorney for review of whether any information

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is exempt from disclosure (subject to redaction) based on privacy interests authorized under the Public Records Act.

### **N. Investigations**

When deemed warranted, the Mayor or majority of Council may call for an investigation of board or commission member conduct. Should the city manager or city attorney believe an investigation is warranted, they shall confer with the Mayor or Council. The Mayor or Council shall ask the city manager and/or the city attorney to investigate the allegation and report the findings.

The results of any such investigation shall be provided to the full Council in the form of a Report to Council, and shall be placed on the agenda of a noticed public meeting as "Information Only". Any such report shall be made public and distributed in accordance with normal procedures (i.e., hard copies to numerous public locations and posted online). Any report to Council addressing the investigation of board and commission members shall be routed through the Office of the City Attorney for review of whether any information is exempt from disclosure (subject to redaction) based on privacy interests authorized under the Public Records Act.

It shall be the Mayor and/or the Council's responsibility to determine the next appropriate action. These actions include, but are not limited to: take no further action; discussing and counseling the individual on the violations; placing the matter on a future public hearing agenda to consider sanctions; forming a Council ad hoc subcommittee to review the allegation, the investigation and its findings, as well as to recommend sanction options for Council consideration.

### **O. Removal**

The members of each board or commission shall be subject to removal by motion of the City Council approved by at least four affirmative votes, for the following reasons:

- (I) Failure to maintain eligibility requirements
- (II) Failure to take the required Oath of Office
- (III) Failure to complete required training
- (IV) Failure to meet attendance requirements
- (V) Failure to fulfill board or commission duties
- (VI) Failure to adhere to Council policy governing boards and commission member interaction with City Council, the public, staff, and/or other board or commission members.
- (VII) Violation of Code of Ethics and Conduct

### **P. Administrative Policies**

The city manager shall have full authority to develop and implement any administrative policies and practices deemed necessary to support the operation of all boards and commissions.

### **Q. Bylaw Revisions**

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Boards and commissions may craft additional bylaw provisions specific to themselves as long as they do not conflict with Sections A through P above. Any additional bylaw provisions must be approved by the City Council.

### **R. Council Subcommittee**

A standing subcommittee of three members of City Council shall review all 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.

((Adopted: RTC 07-148 (5/1/07); clarity update 9/21/07; Revised by RTC 08-043 (2/12/08) in accordance with Council action on 11/27/07 and 1/29/08; Revised by RTC 08-294 (10/14/08); Revised by RTC 09-047 (2/24/09); Revised by RTC 09-098 (5/12/09); clerical update (5/15/09); Revised by RTC 09-315 (12/15/09); Revised by RTC 10-143 (5/25/10) in accordance with Council action on 3/23/10); Revised by RTC 10-217 (8/31/2010)

Lead Department: Office of the City Manager

**Attachment C**

**Council Subcommittee on Board and Commission Bylaws Amendments**

**Report to Council: Proposed Changes to Board and Commission Appointment Process  
Proposed Changes to Resolution of Administrative Questions/Concerns**

**DISCUSSION**

On September 8<sup>th</sup>, 2010, the Council Subcommittee on Board and Commission Bylaws Amendments met to consider two changes to Council policy, regarding proposed changes to the board and commission appointment process, and regarding proposed changes to the process for resolving boardmember/commissioner administrative questions or concerns. In attendance were

<b><u>Councilmembers</u></b>	<b><u>Staff</u></b>	<b><u>Members of the Public</u></b>
Otto Lee	Kathleen Franco-Simmons	Kevin Jackson
Dave Whittum		Dixie Carney
Jim Griffith		Hannalore Dietrich

**BOARD AND COMMISSION APPOINTMENT PROCESS**

The Subcommittee considered concerns expressed about the current Council policy for appointing boardmembers and commissioners, and it discussed alternatives to the existing process. The staff RTC outlined two problems with the existing policy of full Council interviews of all candidates, followed by full but separate council electronic/voice votes on each candidate. First, the existing process requires a significant amount of Staff and Council time to complete, often requiring multiple interview sessions and resulting in a long Council meeting with many votes. Second, the existing process and the voting tendencies of councilmembers can result in votes that incorrectly give a candidate the impression that he or she lacks qualifications, or otherwise creates embarrassment for candidates. In other words, a candidate may receive few or no votes, not because of any lack of qualifications on the part of the candidate, but rather due to a strong council preference for another candidate. The Subcommittee examined the current process and alternate processes, with these and other considerations in mind.

The Subcommittee has the following specific recommendations regarding the four processes outlined in the RTC. Regarding Option A, the Subcommittee supports the existing interview process. It acknowledges the time and emotional impact of the existing voting process as issues worth resolving, and it recognizes that better alternatives may exist. Regarding Option B, the Subcommittee believes that the process of voting only on those candidates nominated from the dais would be even more emotionally dismissive of non-appointed candidates than is currently the case, rendering this option worse than the existing process. Regarding Options C and D, the Subcommittee is skeptical that the full Council will be willing to cede appointment authority to the extent required by either option. The Subcommittee further suggests that both options would result in greater "insider politics" governing appointments, undermining public faith in the appointment process. The Subcommittee believes that Option A is not the best option that might be adopted by Council, but it is the best of the four specific options described in the RTC.

Regarding the current process for interviewing commission candidates, **the Subcommittee recommends no changes to the existing process of a full Council interview of all candidates.** While the current process does require a substantial amount of time, the Subcommittee believes that the time is well-spent, and the Subcommittee has no reservations about the existing interview process.

Regarding the current process of casting individual electronic/voice votes for all candidates, the Subcommittee considered various alternatives, including casting votes via paper ballots similar to the

existing study issues process, using instant run-off voting, and various combinations of these and other ideas. The Subcommittee believes there may be merit and significant efficiency gains in using one or more of these options, or combinations of these options. However, the Subcommittee also identified significant challenges with each of these options that require further consideration. For instance, instead of electronic/voice votes, having councilmembers submit paper ballots containing the simultaneous votes for all candidates for a commission would represent a significant time savings to Council and staff. It would also reduce the potential for votes on one candidate to influence the subsequent votes for other candidates, generating more public trust in the process. However, the list of candidates for a given commission can change because of a previous vote on candidates for a different commission, rendering a single ballot with all candidates for all commissions problematic. And separate ballots per commission would result in upward of fifty paper ballots being circulated and aggregated on the dais. Instant run-off voting might also streamline the process, but it may be an inappropriate method for some votes involving few candidates, and it must nevertheless be done in a way that conforms to the Charter requirement of four affirmative votes for any appointed candidate. For these and other reasons, **the Subcommittee recommends no changes to the existing process, with some reservations. The Subcommittee further recommends referring this issue back to the Subcommittee for further consideration and possible recommendation of specific changes to the voting process.**

In addition, the Subcommittee acknowledges the fact that the current appointment process can be discouraging and unfairly embarrassing for commission candidates, particularly those who are not appointed to positions. To mitigate this problem, **the Subcommittee specifically recommends adopting a process whereby the Mayor sends letters to all candidates not appointed to positions, thanking them for their application, explaining the workings of the process in more detail, and encouraging continued civic participation and re-application for future openings.** It is believed that a more thoughtful response to the outcome of the vote, coming from the Mayor, would go a long way towards mitigating any negative reactions created by a specific result.

## **RESOLUTION OF ADMINISTRATIVE QUESTIONS/CONCERNS**

The Subcommittee considered the difficulty that exists when boardmembers and commissioners attempt to follow existing Council policy 7.2.19, 2.J to resolve questions or concerns. The Subcommittee makes no comment on Staff's recommendation to insert the six steps outlined in existing 2.J language into the City's Administrative Manual, as such an action is an operational issue that is completely within Staff's purview and beyond the authority of Council. The Subcommittee devoted much time considering alternative language to replace the six-step process in Council policy, as well as examining challenges that exist because of current policies and practices. The discussion that resulted may have gone beyond the scope of the topic at hand, but some of the more salient points are mentioned here for consideration.

The Subcommittee agreed that the focus of question/concern resolution should be on issues arising when commissioners have difficulties with a fellow commissioner, a member of the public, or a councilmember, when determination must be made as to whether an issue is operational or a matter of policy, and when determination must be made as to the specific responsibilities of a commission. Specific past instances of all of these types of issues were discussed. The Subcommittee agrees that having a six-step process to resolve either of these types of questions is inappropriate. Specific concern was expressed over the fact that as a matter of current practice, the question of whether an issue is operational or policy by nature is currently answered by Staff with no input from Council, despite the fact that Council is expected to be the final arbiter of the operations/policy question. The Subcommittee discussed options for having greater Council involvement in boards and commissions, such as having a Council liaison to all boards and commissions. But it recognizes challenges to such changes, such as the significant time commitment required to have councilmembers present at all commission meetings, and

the possibility of undue councilmember influence in commission recommendations (“two bites at the apple”).

The Subcommittee examined the broader question of the existence of too great a distance between Council and commissions, which was viewed as a contributing factor to the difficulty in resolving commissioner issues. Several issues were identified as warranting consideration. Complaints were made from members of the public that agendas and minutes are occasionally not provided in a timely fashion and occasionally lack sufficient detail, which lessens commissioners’ faith that their input is given due consideration by Council. Meeting minutes, particularly those not yet approved, may factor into Council decisions prior to undergoing any review by commissioners. Commissioners may not feel comfortable approaching councilmembers with questions or concerns. Some of these issues may be resolved with more, or more specific, training of new commissioners. It was also suggested that Commission chairs should take on greater responsibility for reviewing RTCs prior to Council meetings, making a greater effort to attend Council meetings to correct or elaborate on any shortcomings in commission minutes.

**The Subcommittee concurs with Staff’s recommendation to remove the six steps from Council policy, recommending replacement of that process in section 2.J with the following language:**

*Board and commission members with individual concerns of a non-operational nature may seek guidance in any of the following ways:*

- 1) Consult with the commission chair. If possible, this is the preferred course of action.*
- 2) Consult with the Mayor.*
- 3) Consult with another councilmember.*

*When a commission has questions about the commission’s duties or the interpretation of Council policy, the commission may direct an inquiry to:*

- 1) The Mayor.*
- 2) The Council Subcommittee on Boards and Commission Bylaws Amendments*
- 3) The full Council.*

Specific discussion was held about possibly having the Subcommittee take on the role of making the initial determination of operations vs. policy questions, as well as resolving issues of personal conflict. The Subcommittee believes it is the wrong body to resolve issues of conflict, particularly since some such issues may require closed session discussions. However, the Subcommittee may be well suited to act as an initial arbiter of any operations vs. policy questions, and Council may wish to extend the Subcommittee’s area of responsibility and use it as such.

Specific discussion was also held on the notion of allowing commissions, after a majority vote, to form and direct questions and concerns to Council or to the Mayor for subsequent guidance, much the way Council can direct questions to Staff. In reality, commissions may already do so as they see fit. But that may not be obvious to commissioners, and commissions may benefit by making this a formal part of commission agendas.

On a somewhat unrelated note, the Subcommittee requests removal of the word “Amendments” from its title (and, if granted, striking the word from the proposed text above).

Respectfully submitted for Council’s consideration, on behalf of the Subcommittee,

Jim Griffith  
Subcommittee Chair