

Subcommittee Meeting: 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:

Board or Commission	2012	2013	2014	2015
Arts	1 (1)	2 (1)	1 (1)	1 (1)
Bicycle and Pedestrian Advisory	3	0	4 (3)	0
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)
Housing and Human Services	3 (2)	4 (3)	0	0
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). Based on this, it may be possible to partially achieve the desired staggering without impacting incumbents. However, it is not possible to fully achieve this over a four year

period without impacting an incumbent, unless a minimum of two incumbents choose not to seek reappointment or fail to be reappointed by Council.

Without impacting an incumbent, the BPAC can be partially fixed by changing one 2012 term from four years to three years, and one 2014 term from four years to three years. Without impacting an incumbent, the H&HS can be partially fixed by changing one 2012 term from four years to two years, and one 2014 term from four years to two years. These changes results in a distribution of

Appointments, Avoiding Impact on Incumbent Commissioners								
Commission	2012	2013	2014	2015	2016	2017	2018	2019
BPAC now	3	0	4	0	3	0	4	0
BPAC proposed	3	0	4	1	2	1	3	1
H&HS now	3	4	0	0	3	4	0	0
H&HS proposed	3	4	1	1	2	3	1	1

This creates an immediate improvement for H&HS, and an improvement on BPAC by 2014. One possibility is to adopt this proposal in the hopes that one 2014 BPAC and one 2013 H&HS incumbent commissioner choose not to apply for reappointment, or that they are not reappointed by Council. Given the current rate of resignations and commissioners not seeking reappointment, this is not an unreasonable expectation.

By potentially impacting incumbents, both commissions can be fixed. The smallest penalty occurs by reducing three BPAC appointments to 3-year terms and three H&HS appointments to 2-year terms. Specifically, for the BPAC, one 2012 term would be shortened from 4 years to 3 years, and two 2014 terms would be shortened from 4 years to 3 years. And for H&HS, one 2012 term would be shortened from 4 years to 2 years, and two 2013 terms would be shortened from 4 years to 2 years. This results in a distribution of

Appointments, Disregarding impact on Incumbent Commissioners								
Commission	2012	2013	2014	2015	2016	2017	2018	2019
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

If Council decides that potentially impacting incumbents is to be avoided, the partial fix may be the best option. However, a commissioner's appointment to a first term is no guarantee of appointment to a second term, and Council may instead choose to address the problem in its entirety as quickly as possible.

Regardless, it is anticipated that while Council can immediately put a plan into effect, that plan may require changes in 2013 or 2014, based on commission resignations that may occur.

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 is provided as attachment C.

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 another candidate that Council finds more qualified. But the public failure to garner an appointment 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.

One option is to use 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. An example is provided in Attachment B. Councilmembers would simply mark "YES", "NO", or "ABSTAIN" for every applicant. Staff would total 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 could 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.

After the top N vote-getters are identified, Council would still need 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 could still be used to resolve the appointments.

Paper ballots would also 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 could not be used during a meeting where one or more members must teleconference.

Another option is to adopt a more traditional Council voting mechanism, whereby a councilmember initiates a vote by motioning for an up-or-down vote on selected individual candidates on a vacancy-by-vacancy basis ("I move to appoint William Adama to the first four-year vacancy"). The nominations would continue until all vacancies are filled with candidates approved by at least four votes. This has the advantage of dramatically simplifying the process to the minimal number of individual votes required to fill seats. However, it also introduces Council influence into the process, since individual Councilmembers would control the ordering of candidate votes. While the paper ballot method would remove extraneous influences, a traditional Council vote may increase extraneous influences, as well as the potential for gaming the system. It also does not fully eliminate the potential for embarrassment from a failed appointment. It does, however, result in a voting method that simultaneously identifies winners and matches them to vacancies, something that neither the current method nor paper ballots would achieve. This method also remains a valid option during a meeting where one or more Councilmembers must teleconference.

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.

RECOMMENDATION

Regarding potential staggering of commission terms, the subcommittee recommends:

Regarding the appointment voting process, the subcommittee recommends:

Regarding potential staggering of commission terms, staff recommends:

Regarding the appointment voting process, 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
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City of Sunnyvale

Sample Commission Appointment Voting Sheet

Councilmember: _____

Bicycle and Pedestrian Commission

Three vacancies – two full four year terms, one unexpired two year term

Name	YES	NO	ABSTAIN	Appointed in earlier vote
James T. Kirk				
Malcolm Reynolds				
Han Solo (incumbent)				
William Adama				
Kathryn Janeway				
David Bowman				
Zaphod Beeblebrox				
Jean-Luc Picard				
John Robinson				
Roj Blake (incumbent)				
John Sheridan				
John Crichton				

Attachment C: RTC 10-249 from September 14, 2010 Council meeting