

## Proposed 2009 Council Study Issue

**OCA-01 Charter Amendment To End Numbered Council Seats**

<b>Lead Department</b>	Office of the City Attorney		
<b>Element or Sub-element</b>	Charter Section 601		
<b>New or Previous</b>	Previous		
<b>Status</b>	Pending	<b>History</b>	1 year ago Deferred      2 years ago None

**1. What are the key elements of the issue? What precipitated it?**

Sunnyvale Charter Section 601 provides that each Council seat is numbered and a separate elective office, although the election for each seat is "at-large" by all voters in the City.

An alternative would be to remove the numbered Council seats, so all candidates would run for the Council at-large against all other candidates instead of for an individual Council seat. This would require a Charter amendment proposing this change to be submitted to the voters. A Charter amendment ballot measure can be placed on an election ballot by a majority vote of the Council.

The Council selected the numbered seat Charter provision as one of the priority sections for review by the 2006-07 Ad Hoc Charter Review Committee. The Charter Review Committee, after discussion of the numbered seat vs. seats at-large Council structure, recommended to the Council that the current numbered seat system not be changed. The Council followed the Charter Review Committee's recommendation and did not put a Charter amendment changing Section 601 to delete the numbered seats on the November 2007 ballot.

Councilmember David Whittum is proposing that the Council again consider placing a Charter amendment on the ballot to eliminate the numbered seat system. Councilmember Whittum prepared a summary of the Charter amendment he is proposing as a study issue which is included verbatim below:

**Summary**

This Charter Amendment would revise Sunnyvale City Charter, Article VI, Sections 601 and 602<sup>4</sup> to eliminate the numbered seat system, providing a system like that used in Mountain View.<sup>5</sup>

**Argument For:** Voters should have freedom to choose among all candidates. Sunnyvale does not have districts and does not benefit from a seat system. Additionally, this measure would discourage negative campaigning and promote a focus on issues. At-large elections allow voters to vote for the best candidates, while still preserving the ability to defeat an unpopular incumbent. Under the numbered seat system, challengers flock to open seats, leaving most incumbents unchallenged and thus reducing their incentive to be accountable to the voters. An incumbent's behavior has to be very egregious to face a challenger. Under an at-large system,

every incumbent faces every challenger --- and every other incumbent --- increasing the incentive for office-holders to be accountable to the voters.

**Argument Against:** Numbered seats prevent "fringe" candidates from reaching elective office. The seat system insures candidates will focus on their opponents, and campaign against them, promoting discussion of their weaknesses as candidates. In addition, as it is rare for more than two candidates to run for one seat, the seat system tends to insure that anyone elected to Council is supported by a majority of voters. Finally, numbered seats favor incumbents, and thus insure that any political change is slow and gradual and will not upset important activities already planned.

### Amendments

Section 601, Term and Election would read as follows, with amendments shown for clarity, new text in bold, and strike-through for text to be deleted (the 2007 charter amendment is incorporated in this text block):

Each member of the City Council shall be elected from the City at large **on a general ticket** at the General Municipal Election for a term of four years. The term shall commence at the first regular meeting in January, at which the City Council shall certify the election results, and shall continue until a successor is elected and qualified.

~~The office of each member of the Council is a separate elective office to be separately filled at any election.~~

~~The person receiving the highest number of all the votes cast for a particular elective office at any election shall be deemed and declared elected to that office.~~

<sup>4</sup> The Sunnyvale City Charter prior to the 2007 revisions is available at <http://qcode.us/codes/sunnyvale/>. The Charter as amended is appended at the end of this document, in relevant part (Section 601 and 602)

<sup>5</sup> Mountain View City Charter: <http://bpc.iserver.net/codes/mtnview/index.htm>

~~Each Council seat shall be designated by a number from 1 through 7 and shall be known as "Councilmember Seat Number \_\_\_\_\_." The designation given to each elective office shall be used in all elections, nomination papers, certificates of election, and all other papers pertaining to such office, and to designate the incumbent of such office.~~

~~Seats numbered 1, 2, and 3 shall be filled at the General Municipal Election held in 1977 and every fourth year thereafter. Seats numbered 4, 5, 6, and 7 shall be filled at the General Municipal Election held in 1979 and every fourth year thereafter.~~ **For the General Municipal Election held in 2009, the seats formerly numbered as 1, 2, and 3 will be replaced by three general at-large seats. For the General Municipal Election held in 2011, the seats formerly numbered as 4, 5, 6, and 7 will be replaced by four general at-large seats.**

(Amended effective January 14, 1955, July 8, 1968, December 31, 1975, December 21, 1976, January 17, 1992 and November 30, 1995 **and November 28, 2007:** previously

## Section 700)

Section 602, Qualifications would be amended by striking one line:

~~No incumbent member of the Council shall be a candidate for a Council seat other than the one which that person then holds.~~

## Discussion

Note that in Section 601 no text is added to replace the following passage:

~~The person receiving the highest number of all the votes cast for a particular elective office at any election shall be deemed and declared elected to that office.~~

This is because Charter Section 1403<sup>6</sup> defers to the State Election Code. Election Code 10263 states that the highest vote-getters win.<sup>7</sup>

The ideal change would incorporate choice voting (also known as the single transferable vote, or STV<sup>8,9</sup>). However, a concern in trying to incorporate this into a ballot measure is the potentially lengthy wording. Sample statutory language may be found online.<sup>10</sup> Possibly wording

<sup>6</sup> Unless otherwise provided by ordinance hereafter enacted, all municipal elections shall be held in accordance with the provisions of the Elections Code of the State of California, as the same now exist or may hereafter be amended, for the holding of elections in cities organized under the General Law of the State of California, insofar as the same are not in conflict with this Charter. (Amended effective July 8, 1968)

<sup>7</sup> See <http://www.leginfo.ca.gov/calaw.html> or <http://caselaw.lp.findlaw.com/cacodes/elec/1026010266.html> Section 10263 reads: Upon the completion of the canvass and before installing the new officers, the governing body shall adopt a resolution reciting the fact of the election and the other matters that are enumerated in Section 10264. The governing body shall declare elected the persons for whom the highest number of votes were cast for each office. (a) Except as provided in subdivision (b), the governing body shall meet at its usual place of meeting no later than the fourth Friday after the election to declare the results and to install the newly elected officers.

(b) For a consolidated election, the governing body shall meet at its usual place of meeting no later than the next regularly scheduled city council meeting following presentation of the 28-day canvass of the returns, or at a special meeting called for this purpose, to declare the results and to install the newly elected officers.

<sup>8</sup> [www.cfer.org](http://www.cfer.org).

<sup>9</sup> <http://www.fairvote.org/?page=561>

<sup>10</sup> <http://www.fairvote.org/?page=172> or better <http://www.fairvote.org/irv/?page=424>

could be found that keeps the charter language concise, while putting the details into an ordinance. Meanwhile, this seems too complicated for a ballot measure, and so the foregoing discussion has focused on simply eliminating numbered seats.

**2. How does this relate to the General Plan or existing City Policy?**

Charter Section 601 currently provides that the Council runs for numbered seats and a voter-approved Charter amendment would be necessary to amend the City Charter to provide for at-large seats.

**3. Origin of issue**

**Council Member(s)** Whittum  
**General Plan**  
**City Staff**  
**Public**  
**Board or Commission** none

**4. Multiple Year Project?** No **Planned Completion Year** 2008

**5. Expected participation involved in the study issue process?**

**Does Council need to approve a work plan?** No  
**Does this issue require review by a Board/Commission?** No  
**If so, which?**  
**Is a Council Study Session anticipated?** Yes  
**What is the public participation process?**  
 Notice of study session and Council meeting through standard City posting and publication.

**6. Cost of Study**

**Operating Budget Program covering costs**  
 751  
**Project Budget covering costs**  
**Budget modification \$ amount needed for study**  
**Explain below what the additional funding will be used for**

**7. Potential fiscal impact to implement recommendations in the Study approved by Council**

**Capital expenditure range** None  
**Operating expenditure range** \$51K - \$100K  
**New revenues/savings range** None

**Explain impact briefly**

The City would need to pay for the ballot measure to be printed and placed on the ballot. Actual costs will vary depending on the number of other ballot measures the City has on the same ballot and are projected to be between \$50,000 to \$100,000.

**8. Staff Recommendation**

**Staff Recommendation** None

**If 'For Study' or 'Against Study', explain**

Note: The proposed study issue/Charter Amendment was a Council priority issue for the 2006-07 Ad Hoc Charter Review Committee. The Ad Hoc Charter Review Committee states in its Final Report dated April 10, 2007:

The Committee recommends no changes to the current system of electing Councilmembers by numbered seat City-wide, rather than in an at-large election where all candidates run for all open seats.

**9. Estimated consultant hours for completion of the study issue**

Managers	Role	Manager	Hours			
Lead	Kahn, David	Mgr CY1:	20	Mgr CY2:	0	
			Staff CY1:		10	Staff CY2:
Support	Berry, Kathryn	Mgr CY1:	20	Mgr CY2:	0	
			Staff CY1:		0	Staff CY2:
Interdep	Walker, Robert	Mgr CY1:	20	Mgr CY2:	0	
			Staff CY1:		0	Staff CY2:
<b>Total Hours CY1:</b>			<b>70</b>			
<b>Total Hours CY2:</b>			<b>0</b>			

**Note: If staff's recommendation is 'For Study' or 'Against Study', the Director should note the relative importance of this Study to other major projects that the Department is currently working on or that are soon to begin, and the impact on existing services/priorities.**

Reviewed by



Department Director

12-10-08

Date

Approved by



City Manager

12-10-08

Date

**Addendum**

**A. Board / Commission Recommendation**

**Issue Created Too Late for B/C Ranking**

<b>Board or Commission</b>	<b>Rank Rank 1 year ago</b>	<b>Rank Rank 2 years ago</b>
Arts Commission		
Bicycle and Pedestrian Advisory Committee		
Board of Building Code Appeals		
Board of Library Trustees		
Child Care Advisory Board		
Heritage Preservation Commission		
Housing and Human Services Commission		
Parks and Recreation Commission		
Personnel Board		
Planning Commission		

**Board or Commission ranking comments**

**B. Council**

**Council Rank** (no rank yet)  
**Work Plan Review Date** (blank)  
**Study Session Date** (blank)  
**RTC Date** (blank)  
**Actual Complete Date** (blank)  
**Staff Contact**

## Proposed 2009 Council Study Issue

## OCA-02 Consideration of Sunnyvale Whistleblower Protection Ordinance

<b>Lead Department</b>	Office of the City Attorney		
<b>Element or Sub-element</b>	7.3 Legislative Management		
<b>New or Previous</b>	Previous		
<b>Status</b>	Pending	<b>History</b>	1 year ago Dropped      2 years ago None

### 1. What are the key elements of the issue? What precipitated it?

Current California state law provides protection against retaliation to "whistleblowers" who disclose violations of a state or federal statute or regulation to a government or law enforcement agency and is applicable to Sunnyvale employees and officers.

Current Sunnyvale Administrative Policy VI, Section 6 prohibits any retaliation against employees who complain about or oppose discrimination based on race, color, religion, national origin, ancestry, disability, medical condition, marital status, sex, sexual orientation, or age.

This study issue would research whether a separate city ordinance to protect City employees, commissioners and board members should be adopted. It would also provide a draft City whistleblower protection ordinance with penalty options for the enforcement of the ordinance. Several large cities such as San Francisco, Los Angeles and Oakland that have separate Auditor Departments or a staffed Ethics Commission have adopted whistleblower ordinances as a supplement to state and federal whistleblower protections.

### 2. How does this relate to the General Plan or existing City Policy?

**POLICY B.3** Prepare and update ordinances to reflect current community issues and concerns in compliance with state and federal laws.

#### **Administrative Policy Chapter 3, Article 6, Section 6. Policy Against Harassment, Discrimination and Retaliation**

##### **Subd. 1. Purpose**

It is the City's intent and the purpose of this Policy to provide all employees, applicants, and contractors with an environment that is free from any form of harassment, discrimination or retaliation as defined in this Policy. This Policy prohibits harassment or discrimination on the basis of any of the following protected classifications: an individual's race, religion, color, sex, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality), ethnic or national origin, ancestry, citizenship status, uniformed service member status, marital status, family relationship, pregnancy, age, cancer or HIV/AIDS related medical condition, genetic characteristics, and physical or mental disability (whether perceived or actual). It is also the policy of the City to provide a procedure for investigating alleged harassment, discrimination and retaliation in violation of this Policy. The protection from discrimination includes the protection from retaliation on any of the above identified protected classifications against an employee for his or her having taken action either as a complainant or grievor, or for assisting a complainant or grievor in taking action, or for acting

as a witness or advocate on behalf of an employee in a legal or other proceeding to obtain a remedy for a breach of this policy.

**Subd. 2. Policy**

The City has zero tolerance for any conduct that violates this Policy. Conduct need not rise to the level of a violation of law in order to violate this Policy. Instead, a single act can violate this Policy and provide grounds for discipline or other appropriate sanctions. If you are in doubt as to whether or not any particular conduct may violate this Policy, do not engage in the conduct, and seek guidance from a supervisor or the Director of Human Resources.

**3. Origin of issue**

**Council Member(s)** Whittum  
**General Plan**  
**City Staff**  
**Public**  
**Board or Commission** none

**4. Multiple Year Project?** No **Planned Completion Year** 2009

**5. Expected participation involved in the study issue process?**

**Does Council need to approve a work plan?** No  
**Does this issue require review by a Board/Commission?** No  
**If so, which?**  
**Is a Council Study Session anticipated?** Yes  
**What is the public participation process?**  
 Standard noticing of study session and public meeting, and opportunity for public comment.

**6. Cost of Study**

**Operating Budget Program covering costs**  
 751- Comprehensive legal Services  
**Project Budget covering costs**  
**Budget modification \$ amount needed for study**  
**Explain below what the additional funding will be used for**

**7. Potential fiscal impact to implement recommendations in the Study approved by Council**

**Capital expenditure range** None  
**Operating expenditure range** \$500 - \$50K  
**New revenues/savings range** None

**Explain impact briefly**  
 If the City adopts a local "whistleblower" ordinance, it would need to designate a department to receive and investigate whistleblower complaints and additional funds would need to be budgeted to cover staff time.

**8. Staff Recommendation**

**Staff Recommendation Against Study**

**If 'For Study' or 'Against Study', explain**

Existing state and federal "whistleblower" law, and existing City administrative policies, prohibit retaliation for the reporting of alleged non-compliance with a state or federal law or regulation, or for complaining or participating as a witness in a matter seeking redress for violation of City policy and rules. Additionally, the City Manager has the authority to investigate and take appropriate action on any complaints involving City staff and alleged retaliation for reporting a policy or regulation violation. There is not a clearly demonstrated need for an additional City ordinance that would be duplicative of whistleblower protections already provided in state and federal law and city administrative policy and would require additional staff resources and budget.

This study issue is the same as OCA-03 from 2008, which the Council voted to drop at the 2008 Study Session workshop.

**9. Estimated consultant hours for completion of the study issue**

Managers	Role	Manager	Hours	
Lead	Kahn, David	Mgr CY1:	40	Mgr CY2: 0
		Staff CY1:	0	Staff CY2: 0
Support	Boco, Robert	Mgr CY1:	30	Mgr CY2: 0
		Staff CY1:	0	Staff CY2: 0
Interdep	Luebbers, Gary	Mgr CY1:	10	Mgr CY2: 0
		Staff CY1:	0	Staff CY2: 0
<b>Total Hours CY1:</b>			<b>80</b>	
<b>Total Hours CY2:</b>			<b>0</b>	

**Note: If staff's recommendation is 'For Study' or 'Against Study', the Director should note the relative importance of this Study to other major projects that the Department is currently working on or that are soon to begin, and the impact on existing services/priorities.**

Reviewed by



Department Director

12-10-08

Date

Approved by



City Manager

12-12-08

Date

### Addendum

**A. Board / Commission Recommendation**

**Issue Created Too Late for B/C Ranking**

<b>Board or Commission</b>	<b>Rank Rank 1 year ago</b>	<b>Rank Rank 2 years ago</b>
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Arts Commission

Bicycle and Pedestrian Advisory Committee

Board of Building Code Appeals

Board of Library Trustees

Child Care Advisory Board

Heritage Preservation Commission

Housing and Human Services Commission

Parks and Recreation Commission

Personnel Board

Planning Commission

**Board or Commission ranking comments**

**B. Council**

**Council Rank** (no rank yet)

**Work Plan Review Date** (blank)

**Study Session Date** (blank)

**RTC Date** (blank)

**Actual Complete Date** (blank)

**Staff Contact**

## Proposed 2009 Council Study Issue

**OCA-03 Consideration of Directly-Elected Mayor**

**Lead Department** Office of the City Attorney  
**Element or Sub-element**  
**New or Previous** New  
**Status** Pending **History** 1 year ago None 2 years ago None

**1. What are the key elements of the issue? What precipitated it?**

Section 605 of the City Charter provides that the mayor is selected by the City Council from one of its members. The first Charter provided for the selection of the mayor from and by the City Council. The City has previously debated the issue of a directly elected mayor. In 1987, the City Council rejected a proposal to put a charter amendment on the ballot for the direct election of the mayor. Instead, the Council proposed an alternative Charter amendment that kept the selection of the mayor by and from the City Council, but changed the term from one to two years. In 1991, the City again debated the issue of a directly elected mayor. The City Council appointed a Charter review committee and primarily charged it with studying the issue of a directly-elected mayor. The 1991 committee recommended against a Charter amendment for a directly elected mayor and the Council adopted this recommendation. In response to the recommendation of the 1991 committee, a councilmember circulated an initiative petition for a Charter amendment providing for a directly-elected mayor on the 1991 ballot. The initiative qualified for the 1991 ballot and failed by a vote of 9,412 no to 6,678 yes. The issue of a directly elected mayor was again considered by the 2006-07 Charter Review Committee. A majority of the committee recommended continuing the present system of electing the mayor rather than having a directly elected mayor, and the Council followed the committee's recommendation and did not place the directly elected mayor on the 2007 ballot.

The National Civic League has prepared a summary of the arguments both for and against a directly elected mayor, as follows:

Directly-Elected Mayor:

1. Clear expression of city-wide policy choices (but more important if district elections for council)
2. More media coverage of mayor's race raising voter awareness of issues
3. Increases potential for mayoral leadership by providing popular support base
4. *Disadvantage-possibility that mayor will disagree with Council on policy issues and rely on mandate from voters instead of working for consensus with council*

Selection of Mayor By Council:

1. Local policy leadership functions best when a majority of

councilmembers select the mayor- reduces likelihood of conflict between council and mayor

2. *Disadvantage- Can diminish effective leadership if serves at pleasure of council instead of set term*

3. *Disadvantage- Rotation of office of mayor may not consider capability or support and limits experience mayor can acquire to increase leadership competence*

**2. How does this relate to the General Plan or existing City Policy?**

Section 605. Presiding Officer. Mayor. At the same meeting following each General Municipal Election at which the City Council certifies the election results, or the second regular meeting in November in even-numbered years, the City Council shall select one of its members as its presiding officer, who shall have the title of Mayor. Such selection shall be by motion of the City Council. The Mayor shall have a voice and vote in all its proceedings. He/she shall be the official head of the City for all ceremonial purposes. He/she shall perform such other duties as may be prescribed by this Charter or as may be imposed by the City Council consistent with his/her office. The Mayor shall serve in such capacity for a term of one year from and after which the appointment is made, and until a successor is selected; provided, that a person can continue to serve in the capacity of Mayor only while that person remains as a member of the City Council. In the event of a vacancy in the office of Mayor, the City Council shall select one of its members to serve as Mayor for the remainder of the unexpired term.

The Mayor may be removed from such office prior to expiration of his/her term by a motion of the City Council adopted by the affirmative votes of at least five members of the City Council. (Amended effective December 31, 1975, December 21, 1976, December 21, 1987, and November 30, 1995: previously Section 704)

**3. Origin of issue**

- Council Member(s)** Whittum
- General Plan**
- City Staff**
- Public**
- Board or Commission** none

**4. Multiple Year Project?** No **Planned Completion Year** 2009

**5. Expected participation involved in the study issue process?**

**Does Council need to approve a work plan?** No

**Does this issue require review by a Board/Commission?** No

**If so, which?**  
none

**Is a Council Study Session anticipated?** Yes

**What is the public participation process?**

Notification to public through standard agenda posting and publication. Opportunity for public comment at study session and council meeting.

**6. Cost of Study**

**Operating Budget Program covering costs**

751-Comprehensive Legal Services

**Project Budget covering costs**

**Budget modification \$ amount needed for study**

**Explain below what the additional funding will be used for**

**7. Potential fiscal impact to implement recommendations in the Study approved by Council**

**Capital expenditure range** None

**Operating expenditure range** \$500 - \$50K

**New revenues/savings range** None

**Explain impact briefly**

**8. Staff Recommendation**

**Staff Recommendation** Against Study

**If 'For Study' or 'Against Study', explain**

The Council identified the directly-elected mayor as a priority for the 2006-07 Charter Review Committee. After debate and discussion, the Charter Review Committee's final recommendation was:

**The Committee recommends no change to the Charter's method of electing the Mayor.**

The issue of a directly-elected mayor has been recently reviewed and studied and this study issue would be duplicative of the work done by the Charter Review Committee in 2006-07 and the Council's recent review of this issue.

**9. Estimated consultant hours for completion of the study issue**

Managers	Role	Manager	Hours			
Lead	Kahn, David		Mgr CY1:	40	Mgr CY2:	0
			Staff CY1:	0	Staff CY2:	0
Support	Moon, Rebecca		Mgr CY1:	0	Mgr CY2:	40

Staff CY1: 0 Staff CY2: 0

Total Hours CY1: 40

Total Hours CY2: 40

**Note: If staff's recommendation is 'For Study' or 'Against Study', the Director should note the relative importance of this Study to other major projects that the Department is currently working on or that are soon to begin, and the impact on existing services/priorities.**

Reviewed by

David Kahn by Kathryn A Berry 2/13/09  
Department Director Date

Approved by

[Signature] 2/13/09  
City Manager Date

### Addendum

**A. Board / Commission Recommendation**

**Issue Created Too Late for B/C Ranking**

Board or Commission	Rank Rank	Rank 1 year ago	Rank 2 years ago
Arts Commission			
Bicycle and Pedestrian Advisory Committee			
Board of Building Code Appeals			
Board of Library Trustees			
Child Care Advisory Board			
Heritage Preservation Commission			
Housing and Human Services Commission			
Parks and Recreation Commission			
Personnel Board			
Planning Commission			

**Board or Commission ranking comments**

**B. Council**

**Council Rank** (no rank yet)  
**Work Plan Review Date** (blank)  
**Study Session Date** (blank)  
**RTC Date** (blank)  
**Actual Complete Date** (blank)  
**Staff Contact**