



City Manager's Report
July 10, 2012 City Council Meeting
Prepared By: Cleve Morris

Item#: 12.1

Subject: Review Options for Filling of Vacant Council Seat, Approve by Minute Action a Motion Rejecting the Option to Appoint, and Calling of a Special Election to fill the Vacant Council Seat. Note, However, that the Position will be Filled as Part of the Regular Election in November 2012, Thus Negating the Need for a Special Election.

Discussion: With the resignation of Dave Machado, the Council is required to take action to fill the vacant seat. California Government Code (CGC) Section 36512, Exhibit A attached hereto, outlines the options for filling the position. Action must be taken by the Council within 60 days of the seat becoming vacant. Mr. Machado submitted his letter of resignation on June 19, 2012. Therefore, the Council has until August 18, 2012 to take action. The following options are available to the Council:

1. Call for a special election. CGC Section 36512 (b) states that:

“(b) If a vacancy occurs in an elective office provided for in this chapter, the council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy. The special election shall be held on the next regularly established election date not less than 114 days from the call of the special election.”

Note that the election shall take place on the next regularly established election date, in this case, November 2012. Since Mr. Machado's term was up in November anyway, calling of a special election is not necessary as the seat will be filled at that election.

2. Appoint someone to fill the position. As you can see from Exhibit A, the Code is fairly silent on the issue of how the appointment is to be made. However, as Subsection (b) states, the appointment must be made within 60 days of the vacancy occurring, or August 18, 2012. Most agencies if choosing appointment will treat it similar to filling of commissions. That is, advertise and receive applicants. The entire Council then interviews the applicants and makes an appointment from those that apply. Note that 60 days is a very short time period to accomplish this, so if this option were chosen, we should begin immediately.

Because of the short time frame until the election--four months--it is staff's recommendation that we allow the vacancy to be filled through the normal election process in November. The pro of this is that it allows the normal democratic process to fill the position. The con is that between now and then, any issue before the Council will require a minimum 3-1 vote as a 2-2 tie will defeat any issue before the Council.

Cost: There is no cost associated with this item if we wait until the November election. If the Council chooses to appoint, there may be some costs associated with advertising.

Budget Impact: None, if the position is filled through the November election. If the decision is made to appoint, there may be some cost for advertising, but it can most likely be absorbed in the budget, therefore no impact to the budget.

Recommendation: Review Options for Filling of Vacant Council Seat, Approve by Minute Action a Motion Rejecting the Option to Appoint, and Calling of a Special Election to fill the Vacant Council Seat. Note, However, that the Position will be Filled as Part of the Regular Election in November 2012, Thus Negating the Need for a Special Election.



M. Cleve Morris, City Manager

Attachment: CGC Section 36512 (in part)

EXHIBIT A

36512. (a) If a **vacancy** occurs in an appointive office provided for in this chapter, the **council** shall fill the **vacancy** by appointment. A person appointed to fill a **vacancy** holds office for the unexpired term of the former incumbent.

(b) If a **vacancy** occurs in an elective office provided for in this chapter, the **council** shall, within 60 days from the commencement of the **vacancy**, either fill the **vacancy** by appointment or call a special election to fill the **vacancy**. The special election shall be held on the next regularly established election date not less than 114 days from the call of the special election. A person appointed or elected to fill a **vacancy** holds office for the unexpired term of the former incumbent.

(c) Notwithstanding subdivision (b) and Section 34902, a city may enact an ordinance that does any of the following:

(1) Requires that a special election be called immediately to fill every city **council vacancy** and the office of mayor designated pursuant to Section 34902. The ordinance shall provide that the special election shall be held on the next regularly established election date not less than 114 days from the call of the special election.

(2) Requires that a special election be held to fill a city **council vacancy** and the office of mayor designated pursuant to Section 34902 when petitions bearing a specified number of verified signatures are filed. The ordinance shall provide that the special election shall be held on the next regularly established election date not less than 114 days from the filing of the petition. A governing body that has enacted such an ordinance may also call a special election pursuant to subdivision (b) without waiting for the filing of a petition.

(3) Provides that a person appointed to fill a **vacancy** on the city **council** holds office only until the date of a special election which shall immediately be called to fill the remainder of the term. The special election may be held on the date of the next regularly established election or regularly scheduled municipal election to be held throughout the city not less than 114 days from the call of the special election.

(d) (1) Notwithstanding subdivision (b) and Section 34902, an appointment shall not be made to fill a **vacancy** on a city **council** if the appointment would result in a majority of the members serving on the **council** having been appointed. The **vacancy** shall be filled in the manner provided by this subdivision.

(2) The city **council** may call an election to fill the **vacancy**, to be held on the next regularly established election date not less than 114 days after the call.

(3) If the city **council** does not call an election pursuant to paragraph (2), the **vacancy** shall be filled at the next regularly established election date.