

Folsom City Council Staff Report

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| MEETING DATE: | 6/23/2020 |
| AGENDA SECTION: | Old Business |
| SUBJECT: | Filling Council Vacancy by Appointment and/or Direction to Staff |
| FROM: | City Attorney's Office |

RECOMMENDATION / CITY COUNCIL ACTION

Staff respectfully requests that the City Council fill a vacancy on the City Council by appointment. If, however, the Council desires to fill vacancy through a special election, Staff will prepare the necessary documents to bring back to the Council at a future Council meeting for consideration and action.

BACKGROUND / ISSUE

The Folsom City Council is comprised of five Councilmembers elected at large for a term of 4 years. Once elected, each Councilmember represents all citizens throughout the City. Former Councilmember Roger Gaylord was elected in 2016 and resigned prior to the end of his term on June 10, 2020, creating a vacancy on the City Council.

The purpose of this item is to provide information to the Council on the methods of filling a vacancy, and to request that the vacancy be filled by appointment due to timing (approximately 4 months to the next Municipal Election) and cost considerations. The City Council continued this matter to this meeting following discussion on June 15, 2020.

POLICY / RULE

Pursuant to Section 2.08 of the Folsom City Charter, in the event of a vacancy on the Council due to a member's resignation, the method to fill the vacancy shall be as provided by state law.

ANALYSIS

California Government Code section 36512 establishes the state law procedure for filling City Council vacancies. Section 36512(b) provides that, in the event a City Council vacancy occurs, the Council is authorized to fill the vacancy either by: (1) appointment; or (2) call a special election to fill the vacancy. A person appointed or elected to fill a vacancy holds office for the unexpired term of the former incumbent.

A. Filling Vacancy by Appointment

If the City Council desires to appoint an individual to fill a vacant City Council seat, the person appointed must be eligible to hold a seat on the Council pursuant to Sections 2.01(A) and 2.07(A) of the Folsom City Charter, i.e., the person must be a registered voter residing in the City of Folsom, and not hold any other City office or City employment. Additionally, if the Council wishes to conduct an interview of potential appointees, the interview must be conducted by the entire City Council in open session under the Brown Act.

As the appointment is by majority vote of the City Council, the Council may decide to have each Councilmember present a short list of potential appointees for the entire Council vote on, similar to and in accordance with its standard practice for making appointments to boards and commissions.

B. Filling Vacancy by Special Election

If the City Council desires to fill the vacancy through special election, the Council must call a special election within 60 days of the commencement of the vacancy, and the special election must be held on the next regularly scheduled election date not less than 114 days from the call of the special election (i.e., November 3, 2020). Government Code section 36512(b)(1).

Additionally, Government Code section 36512(c) allows the City Council to adopt any of the following special requirements in a special election to fill a Council vacancy:

- (1) Require that a special election be called to fill every City Council vacancy. 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; or
- (2) Require that a special election be held to fill a City Council vacancy 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. The City Council that has enacted such an ordinance may also call a special election without waiting for the filing of a petition; or
- (3) Provide 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.

The foregoing options are entirely optional; the City Council is not required to adopt any of those special requirements pertaining to special elections for purpose of filling a Council vacancy.

FINANCIAL IMPACT

There is no financial impact associated with this Council action. According to the Sacramento County Voter Registration and Elections Office, the estimated cost of calling a local special election varies between \$418,000 and \$837,000, depending on a number of variables, including the number of ballots to be printed and mailed to the registered voters and staffing cost for conducting the election.

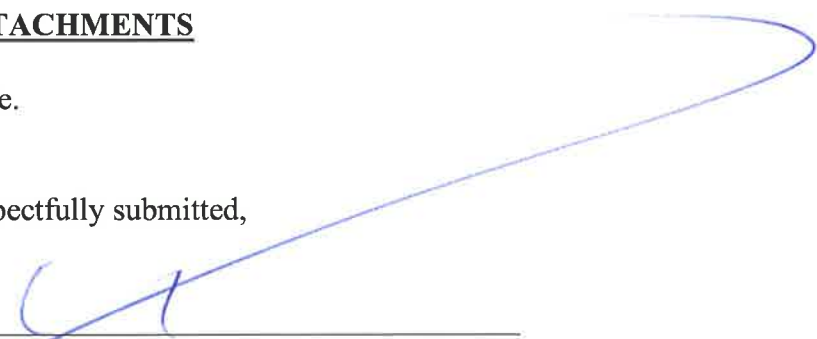
ENVIRONMENTAL REVIEW

This Council action is not a “project” under CEQA and is therefore exempt from CEQA review.

ATTACHMENTS

None.

Respectfully submitted,



Steven Wang, City Attorney

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