



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 12/17/2019

ITEM NO: 1

DATE: December 10, 2019
TO: Mayor and Town Council
FROM: Robert Schultz, Town Attorney
SUBJECT: Provide Direction on Filling a Vacant Council Position Pursuant to
Government Code Section 36512

RECOMMENDATION:

Receive information about options for filling a vacant Council seat and provide policy direction to staff for filling the seat vacated by Council Member Leonardis.

BACKGROUND:

Effective December 20, 2019, Steve Leonardis resigned his position as a Councilmember. Due to his resignation, the Council is being asked to decide how to fill the remainder of his elected term, which expires in December of 2022.

Government Code Section 36512 sets forth the requirements relating to filling vacancies for an elective office. Subdivision (b) of that section provides two options that the Town can utilize to fill a vacancy in an elective office within 60 days from the commencement of the vacancy: 1) fill the vacancy by appointment; or 2) call a special election to fill the vacancy.

As a result, City Council must address the issue of filling the vacancy and is obligated to act within 60 days from the commencement of the vacancy. It therefore has until February 19, 2020 to choose to either make an appointment or call a special election.

PREPARED BY: Robert Schultz
Town Attorney

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

DISCUSSION:

Option 1 - Appoint a successor until December 2020:

Town Council may, within 60 days of the vacancy, make an appointment to fill the vacancy. If the Council fills the vacancy by appointment, the duration of the appointment is determined by when the vacancy occurs. Government Code Section 36512 states that If the vacancy occurs in the first half of the term of office and at least 130 days prior to the next general election, then the appointed person shall hold office until the next general municipal election. If the vacancy occurs in the first half of a term of office, but less than 130 days prior to the next general municipal election, or if the vacancy occurs in the second half of a term of office, the person appointed to fill the vacancy shall hold office for the unexpired term of the former incumbent.

Because the vacancy is occurring within the first half of Mr. Leonardis' term and at least 130 days prior to the next general election, the person appointed to fill the vacancy would hold office until the next general municipal election, which is November 3, 2020. At that time, the appointed person, should they desire to continue in office, would have to run for office to retain the seat through the remainder of the term, which will end December 2022.

There is no legal requirement that the Council use any particular method of appointment. The Council does not, for example, have any obligation to appoint someone who ran in the last election and got the 4th highest votes. It is common in such situations for the Council to notice the vacancy and invite applications. If the Council opts for interviews, it must be done at a public meeting, although the meeting can be held at any time. In addition, the appointment must be made in public. This is not a permitted closed session discussion or decision.

Should the Council wish to appoint an applicant to fill the vacancy, staff would advertise the vacancy and provide an application form similar to our Committee/Commission Application. Staff has drafted a sample for consideration (Attachment 1). Additionally, since residents seeking Town Council election typically submit a candidate statement, Council could also require applicants to provide a statement, not to exceed 400 words, stating their qualifications and why they are the best applicant to appoint to the vacant seat. All of these questions or documents are to assist both the Town Council and the general public learn as much as possible about a potential appointee given the short time frame. These questions and documents are suggestions and the final application for appointment will be based on Town Council direction.

Council could interview all applicants, or based on the number of applications, each Council member could select whom they would like to interview and submit those names to the Town Manager. The Town Clerk will coordinate the interviews. In addition, it is recommended that set lists of questions are established for all applicants to answer. Each Council member would submit two or three questions to be used in the interview process. Should the City Council

DISCUSSION (continued):

choose this option, and want to fill the position as soon as possible, staff would recommend the following timetable.

<u>Action</u>	<u>Proposed Date</u>
Open Application Period	December 20, 2019
Close Application Period	January 17, 2020
Council review period	January 17 – January 23, 2020
Interview questions to City Manager	January 24, 2020
Candidate Interviews – Special Meeting	January 28, 2020
Seating of new Council Member	February 4, 2020

Option 2 – Call a Special Election to elect a successor for the remainder of the term

Town Council may choose to call a special election to fill the vacant City Council seat by adopting a resolution calling the special election (Elections Code Section 12001) within 60 days of the vacancy. Government Code Section 36512(b)(1) states “If the council calls a special election, 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 recent amendment to State Government Code sets forth those dates that are deemed a “regularly established election date” and the next such date is Tuesday, November 3, 2020. If the Council chooses option 2, then the Council position would remain open and the Council would proceed until November 2020 with only four Councilmembers.

Having only four Councilmembers can become problematic when a two to two (2-2) vote amounts to “no action” on the nature and status of the item being voted upon. In addition, given the wording of a particular local ordinance and state laws governing certain subject matters, a “no action” outcome by the Council could actually result in an action being taken. Provided below are examples of “no action” unintentionally resulting in action.

- For example, if the item before the Council involved an appeal of a decision which would otherwise be final in the absence of the appeal, a two to two (2-2) vote would have the effect of denying whatever action the applicant or proponent of the item was requesting.
- For example, a rezoning which is an ordinance and must be adopted by three votes, or a general plan amendment, which requires three votes, could not be adopted.
- For example, it is important to remember the potential danger that a two to two (2-2) vote will result in a project being “deemed approved” under the automatic approval provisions of the Permit Streamlining Act or Subdivision Map Act.
- For example, if the Planning Commission makes recommendations but does not have authority to make a final decision on a tentative map, a two to two (2-2) vote by the

PAGE 4 OF 4

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DISCUSSION (continued):

Council on a tentative map could result in the map being deemed approved, even if the Planning Commission had recommended denial and if the Council takes no further action within specified time limits. (Gov. Code § 66452.2.)

CONCLUSION:

Staff needs Council to provide direction on the process it wants to use to fill the vacancy. If Council does select to appoint, the appointment must be completed by February 19, 2020 to be within 60 days of Councilmember Leonardis resignation.

Attachment:

1. Application for Town Council