



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING

Meeting Date: May 2, 2023

Department: City Clerk
Prepared By: Laura Campagnolo, City Clerk

Subject: *CONSIDERATION OF CALLING A SPECIAL MUNICIPAL ELECTION OR APPOINTING A COUNCILMEMBER TO FILL VACANCY*

Fiscal Impact: The estimated cost to consolidate the City of San Clemente's Special Municipal Election of March 5, 2024 with the election being conducted by the County of Orange Registrar of Voters' Office is approximately \$100,000. This estimated cost includes a special election for one Member of the City Council to fill a vacancy left with the resignation of Councilmember Gene James. Councilmember James' term was set to end in November 2024. Should Council determine to appoint a Councilmember, there would be no fiscal impact.

Summary: *Special Municipal Election or Appointment to Fill City Council Vacancy:*

Former Councilmember Gene James submitted a letter of resignation to the City Manager, City Clerk and City Attorney on April 29, 2023 resigning from the City Council, effective immediately. This resignation created a vacancy on the Council for the remainder of Councilmember James' term, which was set to end in 2024.

A. Special Election to Fill Vacancy.

State law and the City's Municipal Code allow the Council to hold a special election on the next regularly established election date that is at least 114 days from the call of the special election to fill the vacancy for the remainder of Mr. James' unexpired term. The next election is scheduled to take place on March 5, 2024. The special election would be conducted in the same manner as a General Municipal Election, except that voters would be asked to fill the vacancy on the City Council created by Mr. James' resignation for a "short term" to fill the balance remaining on Mr. James' unexpired term.

B. Appointment to Fill Vacancy.

State law and the Municipal Code also provide that the City Council may appoint a person to fill the vacancy. If Council chooses to make an appointment, State law requires that it do so within 60 days of the date of the vacancy (i.e., 60 days from April 29, 2023).

If Council wishes to appoint a Councilmember, and desires to invite applicants, Council may wish to (1) direct the City Clerk to invite San Clemente registered voters

to submit letters explaining their interest and qualifications for serving on Council; and (2) schedule a date for Council to interview candidates and make an appointment. Persons interested in being considered for appointment must be 18 years of age, reside within the corporate limits of the City of San Clemente, and be registered to vote in the City of San Clemente.

Recommended

Action: STAFF RECOMMENDS THAT the City Council take action as follows:

1. Determine whether Council wishes to consider appointing a person to fill the unexpired vacancy on the City Council (November 2024). If an appointment is to be pursued, determine whether or not to direct the City Clerk to invite San Clemente registered voters to submit letters of qualifications and decide whether to schedule a date to interview candidates and make an appointment. If Council chooses to appoint an interim Councilmember, it must do so within 60 days of April 29, 2023, which represents the date that the vacancy commenced.

OR

2. Schedule a Special Election to be held on March 5, 2024.

Attachments: 1. Government Code 36512
2. Ordinance No. 1700

Notification: None.

State of California

GOVERNMENT CODE

Section 36512

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.

(1) 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 person elected to fill a vacancy holds office for the unexpired term of the former incumbent.

(2) If the council fills the vacancy by appointment, the person appointed to fill the vacancy shall hold office pursuant to one of the following:

(A) If the vacancy occurs in the first half of a term of office and at least 130 days prior to the next general municipal election, the person appointed to fill the vacancy shall hold office until the next general municipal election that is scheduled 130 or more days after the date the council is notified of the vacancy, and thereafter until the person who is elected at that election to fill the vacancy has been qualified. The person elected to fill the vacancy shall hold office for the unexpired balance of the term of office.

(B) 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.

(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.

(e) (1) If the city council of a city that elects city council members by or from districts elects to fill a vacancy on the city council by appointment as a result of a city council member resigning from office, the resigning city council member may cast a vote on the appointment if the resignation will go into effect upon the appointment of a successor. A city council member shall not cast a vote for a family member or any other person with whom the city council member has a relationship that may create a potential conflict of interest.

(2) If a city council member elects to cast a vote under this subdivision, the city council member shall be prohibited from the following actions for a period of two years after the appointment of a successor:

(A) Advocating on any measure or issue coming before the city council in which the city council member may have a personal benefit.

(B) Entering into a contract of any kind with the city or a city vendor.

(C) Accepting a position of employment with the city or a city vendor.

(D) Applying for a permit that is subject to the approval of the city council.

(3) This subdivision shall not apply to any city council member who is resigning from the city council due to charges of, or conviction for, corruption or criminal behavior, or who is subject to a recall election.

(Amended by Stats. 2015, Ch. 185, Sec. 1. (AB 952) Effective January 1, 2016.)

ORDINANCE NO. 1700

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF SAN CLEMENTE REPEALING MUNICIPAL CODE
SECTION 2.04.070 RELATING TO COUNCIL VACANCIES**

WHEREAS, in two consecutive years, the City of San Clemente has had two vacancies on its City Council; and

WHEREAS, the City's ordinance on appointment and elections to fill vacancies does not conform to the California Government Code provisions on which it is based, which has caused confusion and unnecessary expense during these vacancies; and

WHEREAS, unlike charter cities which have broad latitude in election matters, California general law cities (e.g. San Clemente) must conform their election process to State statute; and.

WHEREAS, laws on the same subject should be harmonized where possible and ambiguous provision of a law should be construed consistent with the law's overall legislative intent; and

WHEREAS, the interpretation of the current Municipal Code and the Government Code conflict in terms of (1) when the Council must initiate its action to address a vacancy and (2) whether the Council is bound to call an election to fill a Council vacancy when the remaining term is for less than two years; and

WHEREAS, the inconsistency creates major challenges for the Council in seeking to interpret and comply with both in filling the vacancy and deprived Council of the option of filling a partial (less than one-half) term by appointment to avoid an expense of over \$100,000 in a special 2019 election; and

WHEREAS, by repealing these inconsistent and anachronistic provisions of the Municipal Code, the City Council may subsequently fill vacancies according to the standard default provisions of the Government Code applicable to general law cities.

NOW, THEREFORE, the City Council of the City of San Clemente does ordain as follows:

Section 1. Pursuant to the requirements of the laws of the State of California relating to General Law Cities and the Code of the City of San Clemente, the City's Municipal Code Section 2.04.070 is hereby repealed.

Section 2. The provisions of California Government Code Section 36512 or its successor statute shall hereafter govern the filling of City Council vacancies in San Clemente.

Section 3. Notwithstanding any other provision of this section, the Council members in office at the time this ordinance takes effect shall continue in office until the expiration of the term to which he or she was elected. In the event a vacancy occurs before the expiration of the term of a Council member in office at the time this ordinance takes effect, a person appointed or elected to fill such a vacancy shall hold the office in accordance with California Government Code Section 36512.

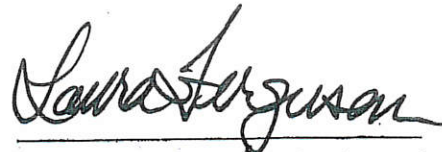
Section 4. If any section, subsection, subdivision, paragraph, sentence, clause or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses or phrases are declared unconstitutional, invalid or ineffective.

Section 5. The City Clerk shall certify the adoption of this ordinance and cause it, or a summary of it, to be published once within fifteen (15) days of adoption in a newspaper of general circulation printed and published within the City of San Clemente, and shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with California Government Code section 36933.

APPROVED AND ADOPTED this 19th day of May, 2020.

ATTEST:


City Clerk of the City of
San Clemente, California


Mayor Pro Tem of the City of
San Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF SAN CLEMENTE)

I, **JOANNE BAADE**, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. 1700 having been regularly introduced at the meeting of May 5, 2020, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the 19th. day of May, 2020, and said ordinance was adopted by the following vote:

AYES: HAMM, JAMES, WARD, MAYOR PRO TEM FERGUSON

NOES: NONE

ABSENT: NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this 22nd day of June, 2020.

Joanne Campagna / Deputy
CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:

[Signature]
CITY ATTORNEY