



CITY COUNCIL AGENDA REPORT

MEETING DATE: March 16, 2021

ITEM NUMBER: NB-5

SUBJECT: VACANCY IN ELECTED MAYORAL POSITION

DATE: MARCH 9, 2021

FROM: LORI ANN FARRELL HARRISON, CITY MANAGER

PRESENTATION BY: LORI ANN FARRELL HARRISON, CITY MANAGER

FOR FURTHER INFORMATION CONTACT: BRENDA GREEN, CITY CLERK
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RECOMMENDATION:

Pursuant to Government Code Section 34902(a), City Council action is requested to conduct the process for an appointment to the position of Mayor due to presumed election of Mayor Foley to the Orange County Board of Supervisors and direct staff accordingly.

BACKGROUND AND ANALYSIS:

On March 9, 2021, a special election was held to fill a vacancy in the Second District seat of the Orange County Board of Supervisors. While the election results have not yet been certified, Mayor Foley was elected to fill that seat. Certification of the election results is not expected until March 18, 2021, with the Board of Supervisors acting on those results on March 23, 2021.

Upon formal certification and approval of the election results, the City Council has several options for filling the vacancy that will occur when Mayor Foley is sworn in to the Board of Supervisors seat.

The rules for filling an elective mayoral vacancy and those for filling a council member vacancy are similar, but not identical. A vacancy in the elective mayor position is governed by California Government Code section 34902(a), which provides, in relevant part, "In the case of a vacancy in the office of the [elected] mayor for any reason, the council *shall fill the vacancy by appointment*. If the council fails to fill it within 60 days, it shall call an election to fill the vacancy to be held on the next established election date to be held not less than 114 days thereafter. A person appointed or elected to fill a vacancy shall hold office for the unexpired term of the former incumbent." (Emphasis added.)

In addition, historically, vacancies on the Costa Mesa City Council have been filled by appointment consistent with Government Code section 36512(b), which states, "If a vacancy occurs in an elective [city council] 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.” In 2003, Mike Schaefer was appointed to fill the vacancy left by Mayor Karen Robinson’s resignation. In 2010, Steve Mensinger was appointed to fill the vacancy resulting from Katrina Foley’s election to the Newport Mesa Unified School District Board.

Thus, if the City Council fails to fill the seat by appointment within 60 days of it becoming vacant, a special election would have to be conducted on November 2, 2021 to fill the final one year of the Mayor’s term. The estimated cost of a special election would be \$433,321 to \$503,350 if the Registrar of Voters has no other matters scheduled for consideration at that time.

The City Council has the following options, which are described in detail below, for filling the vacancy:

1. Appointment
 - a. Direct Appointment
 - b. Application and Appointment
2. Special Election, if there is a failure to appoint within 60 days

Appointment

A Mayoral appointment must meet the following legal requirements:

- Must be a resident of the City of Costa Mesa and a registered voter;
- Must be at least 18 years of age to be eligible;
- The newly appointed Mayor will have to file a Statement of Economic Interest (Form 700).

Direct Appointment - The City Council could appoint a resident by direct appointment without an application process. Direct appointment considerations could be a past Councilmember, a current Councilmember, a current committee, commission or board member, or a November 2020 council candidate, to name a few.

Appointment based on Applications – The City Council could require applications for the position and then take action to appoint.

If the City Council wishes to proceed with appointment through an application process, staff would recommend the following approach/procedure:

1. March 16, 2021 Council approves proposed application (Attachment 1).
2. March 17, 2021 Candidate application period opens, and distribute Press Releases.
3. March 19, 2021 Mayoral vacancy notice published in The Daily Pilot, and posted on the City’s website.
4. March 29, 2021 5:00 p.m., Applications Deadline.
5. April 6, 2021 Mayoral appointment at Regular City Council Meeting

If the City Council wishes to fill the position by appointment through an application process, a draft “Application for Appointment to Mayoral Vacancy” has been prepared and is attached as Attachment 1. If the Council seeks to fill the position by appointment, but fails to do so within 60 days of the vacancy (e.g., due to a tie vote deadlock), it must call a special election as outlined below.

Special Election

If an appointment is not made within 60 days of the vacancy in the mayoral position, thereby triggering a special election as required by the Government Code, the election would be required to be held on the next regularly established election date, not less than 114 days from the call of the special election. For a traditional election (voting at polling places and by mail), Election Code section 1000 establishes that date would be November 2, 2021. This option is not recommended due to the exorbitant cost of holding a stand-alone special election, the fact that there would be only year remaining on the term by the time the election is held, and most important, would require there be a vacancy in the Mayor’s seat for approximately nine months during a local, county, state and national emergency. Given that we remain in a state of emergency due to the pandemic, this is not recommended.

ALTERNATIVES CONSIDERED:

The City Council is required by statute to take either of two actions:

Appoint a replacement within 60 days OR if it fails to do so, proceed with a special election process.

FISCAL REVIEW:

There is no fiscal impact associated with the appointment of a new Mayor. If an appointment is not made, thereby triggering a special election, the estimated fiscal impact would be between \$433,321 and \$503,350.

LEGAL REVIEW:

The City Attorney’s Office has prepared this report.

CONCLUSION:

Staff recommends that City Council conduct the process for an appointment given the anticipated vacancy in the Mayoral seat and direct staff accordingly.

LORI ANN FARRELL HARRISON
City Manager

KIMBERLY HALL BARLOW
City Attorney

CAROL MOLINA
Finance Director

ATTACHMENT: 1. [Draft Application to fill Mayoral Vacancy](#)