



City of Eastvale

City Council Meeting Agenda

Staff Report

MEETING DATE: DECEMBER 11, 2013

TO: MAYOR AND COUNCIL MEMBERS

FROM: CAROL JACOBS, CITY MANAGER

SUBJECT: OPTIONS FOR FILLING THE COUNCIL VACANCY FOR THE UNEXPIRED

RECOMMENDATION: DETERMINE WHAT METHOD TO UTILIZE TO FILL THE CITY COUNCIL VACANCY

BACKGROUND:

At the City Council Meeting of October 24, 2013, City Council Member Kelly Howell announced her resignation from the City Council effective November 30, 2013. Council member Howell was elected in the City's first election effective October 1, 2010, her term expires in November 2014.

Government Code section 365121 sets forth the procedures for filling vacancies in elected city offices. Section 36512(b) gives two specific statutory options for the City Council to follow – appointment and special election. Section 36512(c) allows the City to adopt its own ordinance designating the specific method for the City Council to follow. Eastvale has not adopted an ordinance on point; therefore, unless it were to adopt such an ordinance (described below) prior to the statutory deadline for making a decision, the procedures set forth in section 36512(b) apply.

DISCUSSION:

Under Section 36512(b), 60 days following “commencement of the vacancy”, the City Council must decide either to fill the vacancy by appointment, or to call a special election to fill the vacancy. In either case, a person appointed or elected to fill a vacancy holds office for the unexpired term of the former incumbent. (Section 34902(a).) An effective resignation creates a vacancy. (Section 1770(c).) To be effective, a resignation should be in writing and filed with the city clerk. (Section 1750(f)). A resignation takes effect by its terms; therefore, Councilmember

¹ Unless otherwise stated, all references are to the California Government Code.

Howell's vacancy commences (is effective) on November 30, 2013 and not before. Once effected, a resignation cannot be withdrawn.

Government Code Section 36512 provides the alternatives available to fill the vacancy. The City Council has three options which are described below.

Option 1 – Appoint a successor for the remainder of the term

If the Council votes to fill the vacancy by appointment, the appointment must be made within 60 days of the Council seat becoming vacant.

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 3rd highest votes. It is common in such situations for the Council to notice the vacancy and invite applications. If the Council interviews, it must be done at a public meeting, although the meeting can be held at any time. 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 could advertise the vacancy and provide an application form similar to an employment application. The Council may require additional criteria including the completion of a candidate statement, a 700 Form or other desired information the Council may wish to consider in an application. Staff has drafted a sample for consideration (Attachment 1).

Based on the number of applications each Council member will select whom they would like to interview and submit those names to the City Manager. The City Manager 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 choose this option, and want to fill the position as soon as possible, staff would recommend the following timetable.

<u>Action</u>	<u>Date</u>
Open Application Period	December 12, 2013
Close Application Period	December 26, 2013 - noon
Council review period	December 26, 2014 – January 3, 2014
Interview questions to City Manager	January 3, 2014
Candidate Interviews – Special Meeting	January 7, 2014
Seating of new Council Member	January 8, 2014

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

If the Council votes to call a special election, that election will be held “on the next regularly established election date not less than 114 days from the call of the special election.” In 2014, the regular election dates are April 8, June 3, and November 4. The April 8, 2013 election date is currently eligible as calling for a special election, so long as the City Council calls the special election within the next 15 days following November 30, 2013 or December 15, 2013. Staff received an estimate from the Registrar of Voters that the special election would cost approximately \$66,000.

After the results of the election are certified which could take a maximum of 28 days, the successful candidate would be seated in May 14, 2014 and serve until the end of 2014, however, would also be required to run for the seat in the November 2014 election.

Option 3 – Adoption of Eastvale Ordinance.

The statutory scheme outlined above controls in the absence of a specific ordinance dictating how vacancies on the Council will be filled. Should the City Council wish to adopt an ordinance superseding the statutory scheme, Section 36512(c) applies. Such an ordinance may specify that:

- A special election ***shall in all circumstances*** be called; or
- A special election ***shall*** be held if a certain number of petitions are received ***or*** if the City Council so elects; or
- The Council may either appoint a replacement to serve out the remainder of the term or appoint a replacement to serve only until a special election is called.

Thus, the ordinances allowed under Government Code section 36512(c) afford the City Council a few more options than the statutory scheme. Unless the City of Eastvale were to enact such an ordinance in time to meet the 60-day deadline to make a decision under Section 36512(b), the statutory scheme would control.

FISCAL IMPACT:

The County of Riverside provided an estimate to hold a special election during the upcoming election cycle. A stand-a-lone polling place election on April 8, 2014 is estimated at \$66,000. A consolidated polling place election on June 3, 2014 is estimated at \$48,500 and \$56,000 for a stand-a-lone mail ballot election.

A City Council appointment can be accomplished with existing staff and within the existing budget.

ATTACHMENTS:

1. Proposed Council Candidate application

Prepared by: Carol Jacobs, City Manager

Reviewed by: John Cavanaugh, City Attorney