



COUNCIL REPORT

DATE: January 5, 2023

CATEGORY: New Business

DEPT.: City Attorney's Office,
City Clerk's Office,
City Manager's Office

TITLE: **Options for Filling a Council Vacancy**

RECOMMENDATION

Provide direction to staff on how to fill the vacancy on the City Council created by the resignation of Councilmember Sally Lieber.

BACKGROUND

The City Council seat occupied by Sally Lieber became vacant on December 30, 2022, due to her election to the State of California Board of Equalization, as indicated in the letter she submitted to the City on December 13, 2022. Former Councilmember Lieber's term would have ended in January 2025.

This report discusses the City Charter provisions that apply to filling vacancies on the City Council and provides options available to Council in filling the vacancy.

ANALYSIS

Charter Provisions

Section 504 of the City Charter provides that "[T]he Council shall, within 30 days from the commencement of any vacancy on the Council from whatever cause arising, either fill the vacancy by appointment or call a special election to fill the vacancy." **The seat held by former Councilmember Lieber became vacant on December 30, 2022; therefore, Council has until January 29, 2023, to fill the vacant seat by appointment or by calling a special election.**

The City has used both options to fill vacant Council seats in the past. In the last 44 years, the City Council has experienced 10 vacancies—seven have been filled by appointment, one by special election, and two by consolidation with the General Municipal Election.¹

¹ It is not possible to fill the current vacancy by consolidation with the General Municipal Election because the City's next General Municipal Election is not until November 2024.

Options for Filling the Council Vacancy

Appointment

The City Council has a great deal of discretion regarding the process for appointment subject only to Brown Act public meeting requirements, the Charter-established deadline for appointment, and general legal principles of fairness and equity. If the appointment option is selected, the Council will need to determine how it would like to provide public notice of the vacancy and application process and how it would like to interview applicants within a time frame that allows for final appointment on or before January 29, 2023.

Specifically, the Council will need to establish application requirements and a submission deadline, establish the manner for providing public notice of the vacancy and application process, create interview questions and establish an interview process, and select a date for a public meeting to interview eligible applicants and make an appointment. Included in the table below and in Attachment 1 is a potential timeline for the appointment process.

Table 1: Potential Timeline for Appointment Process

Date	Action
January 5, 2023	City Council Special Meeting—Select appointment option and determine interview and selection process.
January 9 to 13, 2023	Advertisement of vacant seat and application period.
January 18, 2023	Applications due to City Clerk by 5:00 p.m.
January 24, 2023 (<i>if needed</i>)	City Council Regular Meeting—Determine final interview questions of candidates (<i>if not finalized on January 5, 2023</i>).
January 26, 2023	City Council Special Meeting—Interview applicants, select person to fill seat, adopt resolution.
February 14, 2023	City Council Regular Meeting—Swear in newly appointed Councilmember.

Should the Council decide to make an appointment, it is recommended that Council determine the interview and selection process in tonight’s meeting, which may consist of:

1. Questions to be asked of candidates and the time allotted for each question. Staff recommends that the questions and order in which they are asked be the same for each applicant.

2. Applicant interview order established by City Clerk random draw, the results of which would be included in the January 26 Council report along with the application packets received by the deadline.
3. Each Councilmember votes for the applicant of their choice. Voting continues until one candidate receives majority vote (four or more votes). The applicant(s) that receives the least number of votes will be eliminated in each round of voting unless elimination will result in only one remaining applicant that did not receive majority vote. In the event of tie or a vote the leaves only one applicant that did not receive majority vote, no applicant will be eliminated, and the Council must vote again. Examples of possible voting scenarios with three, five, and seven applicants are provided in Attachment 2.
4. Adopting a resolution on January 26 determining the result of the person to be appointed.
5. Swearing in of a new Councilmember at the next regularly scheduled Council meeting on February 14.

Also attached is a draft application for appointment (Attachment 3) and sample interview questions (Attachment 4) for Council's consideration.

Because any appointment must be made by majority vote of the Council, applicant interviews and final appointment must occur at a duly noticed open and public meeting of the City Council. Action by secret ballot is specifically prohibited by the Brown Act; the action taken and the vote or abstention of each Councilmember must be publicly reported.

If the vacancy is filled by appointment, the person appointed will serve the remainder of the term for the seat vacated by Sally Lieber until the January 2025 installment of Councilmembers that will be elected in the November 5, 2024 General Municipal Election.

Election

If the election option is selected, the Council could call a special election that has a higher chance of consolidation with other jurisdictions, thereby lowering the overall cost to the City. The only date the County of Santa Clara Registrar of Voters is planning to hold an election that uses vote by mail ballots and vote centers that the City could consolidate on is November 7, 2023. Mail ballot and vote center elections are estimated to cost anywhere from **\$1.3 million to \$2.1 million** depending on the number of other jurisdictions consolidating on the ballot. Pursuant to Elections Code Section 4000, the City is not eligible to participate in an all-mail ballot election.

Section 504 of the City Charter provides that "a special election to fill a council vacancy may be held on any date." If Council wishes to call a special election on a date other than the date outlined above, the cost would be the highest end of the estimate provided, or \$2.1 million, as it

is unlikely that any other jurisdictions would consolidate on the same date. The County of Santa Clara Registrar of Voters and Board of Supervisors requires a resolution calling a special election and requesting its services to be delivered not less than 125 days prior to the date of election.

Based on the required timeline and Council’s adopted meeting schedule for 2023, the earliest date staff recommends calling a special election is August 1, 2023 (an example of the timeline is included below and as Attachment 5). The City Charter does not provide a mechanism for the Council to make an interim appointment to serve until the results of a special election are declared and a newly elected member is installed.

If the vacancy is filled by special election, the person elected will serve the remainder of the term for the seat vacated by Sally Lieber until the January 2025 installment of Councilmembers elected in the November 5, 2024 General Municipal Election.

Table 2: Potential Timeline for Special Election

Date	Number of Days Prior to Election	Action
January 24, 2023	189 days before election	Council adopts resolutions for special election.
March 29, 2023	125 days before election	Resolutions due to County of Santa Clara.
April 10, 2023	113 days before election	Last day to publish Notice of Election.
April 10, 2023	113 days before election	Nomination period opens.
May 5, 2023	88 days before election	Nomination period closes.
August 1, 2023		Election Day.
August 31, 2023		County’s last day to certify results.
September 12, 2023		Council accepts results/new member oath of office.

FISCAL IMPACT

If a special election were called to elect a member to serve the remainder of former Councilmember Lieber’s term, funding of approximately \$2.1 million would need to be included in the Fiscal Year 2023-24 Recommended Budget to cover the estimated costs as determined by the County of Santa Clara Registrar of Voters. This funding would come from the General Operating Fund as a limited-period item.

NEXT STEPS

Council should determine whether to: (1) select the appointment option, including setting a timeline, approving the application, providing advertising input, establishing the interview process, directing the City Clerk to do a random draw for the applicant interview order, and selecting interview questions; or (2) select an election date and direct staff to work with the

County of Santa Clara Registrar of Voters and return to Council at its January 24 meeting with resolutions for a special election.

PUBLIC NOTICING—Agenda posting.

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- Attachments:
1. Potential Timeline for Appointment
 2. Sample Interview and Selection Procedure
 3. Draft Application
 4. Sample Interview Questions
 5. Example Timeline for Special Election