
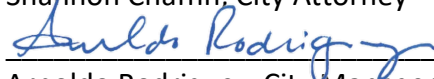


REPORT TO CITY COUNCIL

Approved by:



Shannon Chaffin, City Attorney



Arnaldo Rodriguez, City Manager

Council Meeting of: December 4, 2024

Agenda Number: E-1

SUBJECT:

City Council Discussion of Options Regarding the Process for Filling of a Potential Vacancy on the City Council.

RECOMMENDATION:

Discussion and direction from Council as appropriate.

(Note: The Elections Code has strict timelines regarding filling of vacancies. However, elections results are not anticipated to be certified by the County until just before the Council meeting, and well after Agenda is published. As a result, it is unknown at this time if a vacancy may be created or not. To preserve all options for the Council, this item is included on the Agenda as a placeholder, and may be removed if not warranted.)

SUMMARY:

A vacancy may be created for the City Council seat in District 1. Under State law the City Council is required to fill a vacancy on the City Council either by appointing another Councilmember or holding a special election. There are various options for appointment. Staff is requesting direction from the Council as to how to proceed. Based on the direction from Council, staff will return with the appropriate resolution(s) and any other needed items at a future meeting.

DISCUSSION:

By way of background, Mayor Pro Tem Cece Gallegos was elected as a Councilmember for District 1 for her most recent term in 2022. As of the date of this Staff report, the Madera County Clerk has yet to certify the results of the election and is expected to do so just before the Council meeting. However, this item is being placed on the agenda in the event the County Clerk certifies the results and confirms Ms. Gallegos as Mayor elect before the Council meeting. If so, Ms.

Gallegos will automatically vacate her current office as a Councilmember once she is sworn into office as Mayor.

This will create a vacancy on the City Council that will need to be filled by the new City Council either by appointment or by calling a special election. The person appointed or elected would fill the vacant seat for the remainder of the term of that seat, and that seat would then be up for election in November 2026. This staff report outlines the Council's options and seeks direction from the City Council regarding how to proceed with filling the vacancy.

Vacancy Automatically Created

If a sitting Councilmember is elected to another Council seat then his or her seat becomes vacant. Government Code Section 1099 states that a public officer shall not simultaneously hold two public offices that are incompatible. When two public offices are incompatible, a public officer is deemed to have forfeited the first office upon entering into to the second, resulting in a vacancy in the first seat.

Options for Filling Vacancies

Government Code Section 36512 establishes the means by which a City Council vacancy may be filled. The City does not have an ordinance requiring a certain method for filling a vacancy other than any appointment must reside in that district. Consequently, the City Council has the discretion to either:

- (i) Fill the vacancy by appointment or
- (ii) Call for a special election

The City Council must make this decision – to either fill the vacancy by appointment or call for a special election – within 60 days after the vacancy is created. Consequently, if Mayor Pro Tem Gallegos is sworn in as Mayor at the meeting of December 4, 2024, the City Council must either appoint a qualified individual to fill the vacancy or call for a special election by no later than **Sunday, February 2, 2025**. As a practical matter this means that the Council only has two regular meetings to act (December 18 and January 15th) after this current meeting unless a Special City Council meeting is called.

Filling Vacancy by Appointment

If the City Council chooses to fill the vacancy by appointment, the specific method of appointment is within the Council's discretion, so long as the appointment is made within the 60-day time period. To be eligible, any person appointed must meet the minimum legal requirements required to run for office:

- The candidate must be a registered voter of the City (including age requirements).
- The candidate must maintain a legal residence or domicile within District 1.
- The willingness to be appointed.

In addition to the minimum qualifications, the City Council can consider a wide variety of other factors that may affect a potential appointee's suitability to serve in office, including experience, background, etc.

There are a variety of ways to fill an appointment. Two common methods are either (i) direct appointment by the Council, or (ii) appointment after an application process.

- A. Outright Appointment (No Application) Method. This is typically the fastest option. Under this option the Council may make an appointment without going through an application process. The appointee is legally required to meet the age, residency, and voter registration requirements, and must be willing to be appointed. If the Council is inclined to pursue this option, it can direct Staff to place an item on the agenda for appointment at a future meeting.
- B. Application Method. Under the "application" option, the City Council would establish an application period for appointee hopefuls residing in District 1 to submit an official City application with the City Clerk, with the intention of making an appointment at a future Council meeting after consideration of the applications. If Council wishes to fill the vacancy under this method, Staff request the Council provide direction such as:
 - Notice: How notice is to be provided (publication in paper, posting, word of mouth, etc.).
 - Application content: What sort of special information (if any) would the Council like a potential applicant to address.
 - Deadline for Submittals: When applications should be submitted to the City Clerk.
 - Deadline for Distribution: When the applications will be provided to the Council (either prior to or concurrent with the Agenda for the meeting).
 - Interviews: If the City Council opts to fill the vacancy by appointment, the Brown Act requires any interviews conducted by the entire City Council to be held in open session.

The City Council also has flexibility to use another method of appointment.

Filling Vacancy by Special Election

Alternatively, the City Council may call a special election to fill the vacancy. The special election shall be held on the next regularly established election date not less than 114 days calculated after the call of the special election. In other words, the special election must be at least 115 days or more after the date of the determination to hold the election. The next available established election date that is more than 114 days away is **November 4, 2025**. As a result, the

seat would remain vacant until the election, and the elected individual would serve the remaining 12 months of Mayor Pro Tem's Gallegos' term. The exact cost of holding a special election is not known at this time. However, in 2022 the County Elections official estimated it would take \$35,000 -\$40,000. Due to the cost of holding a special election, it is common for cities fill vacancies by appointment.

If the Council would prefer to call a special election, it should do so prior to February 2, 2025.

FINANCIAL IMPACT:

There is a minimal fiscal impact associated with appointment other than certain Staff time, etc. If directed, Staff can attempt to obtain an updated estimate from the County as to the cost of holding a special election.

ALTERNATIVES:

If the Council unable to either appoint a person to fill the vacancy or call a special election, then the Councilmember position for District 1 will remain vacant.

ATTACHMENTS:

None