



## Agenda Report

18-714

Agenda Date: 5/22/2018

### REPORT TO COUNCIL

#### SUBJECT

City Charter Options for Vacant Council Seat

#### BACKGROUND

Former Councilmember Dominic Caserta resigned from office, effective May 15, 2018, thereby creating a Council Member vacancy in Seat 5 for the partial term ending November 2018. On May 15, the Council directed staff to provide options for filling the vacancy.

The following report provides options per the City Charter.

#### DISCUSSION

Measure Q, concerning filling vacancies, was on the ballot for Santa Clara voters on November 8, 2016 and passed by approximately 80%. The measure amended the Charter to provide that vacancies in any elective office of the City be filled by a four-fifths (4/5) vote of the City Council and to require that persons appointed to fill vacancies occurring in the first half of a term of office shall hold office until the next general municipal election.

#### **Charter Section 703 Vacancies states:**

A vacancy in any elective office of the City, including Mayor, City Council, Chief of Police Department, and City Clerk, from whatever cause arising, shall be filled by appointment by the City Council by a four-fifths (4/5) vote of the remaining members.

In the event the City Council shall fail to fill a vacancy by appointment within thirty (30) days after such office shall have been declared vacant, it shall forthwith cause an election to be held to fill such vacancy. A person appointed or elected to fill a vacancy holds office for the unexpired term of the former incumbent, provided that 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 City 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.

Under this section, Council may appoint someone to fulfill the term of this vacant council seat, but it must do so within 30 days of May 15, 2018. If Council does not

make an appointment by June 14, 2018, then the office will remain vacant until a new Council Member is elected in November 6, 2018 which is the end of the term recently vacated.

### Appointment

An action to appoint requires a 4/5ths majority vote of the remaining Council Members, which, in this case, the full Council is comprised of 6 members. Four-fifths of 6 is 4.8 which rounds to 5; therefore an appointment requires 5 affirmative votes. Under the current Charter, the appointee must be a resident of the City and a qualified registered elector of the City.

The current Charter section is subject to amendment by the possible passage of Measure A in the June 5, 2018 election. If Measure A passes, the two council positions will be up for election in November 2018 in District 1 as designated in the recently adopted Council District Map. Therefore, it may be preferable for the Council to appoint a resident of Council District 1 so that the appointee is eligible to run for election in November 2018 without having to change her or his residence to District 1.

As for the process of appointing a person to fill the Council vacancy, the City Council may choose to simply appoint a Councilmember at a regular or special City Council meeting scheduled any time before June 14, 2018. It could also choose to accept letters of interest and hold interviews for the position, as long as an appointment is made before June 14, 2018.

### Election

If the City Council does not appoint anyone to the office by June 14, 2018, it must call an election to fill the vacancy within a reasonable time thereafter. The Council will be calling for the November Election in late June.

### **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(a) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

### **FISCAL IMPACT**

The costs for filling the vacancy by appointment would be marginal additional staff time and resources. Staff has already accounted for the costs associated with the November Election for this seat.

### **COORDINATION**

This report has been coordinated with the City Attorney's Office.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's

Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

**ALTERNATIVES**

1. Appoint someone to the position prior to June 14, 2018
2. Keep the position vacant until the November 2018 election

**RECOMMENDATION**

Staff does not make any recommendation.

Reviewed by: Brian Doyle, City Attorney; Jennifer Yamaguma, Acting City Clerk

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Letter received from J. Byron Fleck