



## Agenda Report

19-813

Agenda Date: 7/9/2019

### REPORT TO COUNCIL

#### SUBJECT

Charter requirements upon vacancy in the elective office of Chief of Police

#### BACKGROUND

This report intends to provide information to City Council about the process for vacancies, appointments, and elections as set forth in the City Charter and California Elections Code due to the Chief of Police's announcement of his resignation effective September 1, 2019 (Press Release and e-mail communication attached).

#### DISCUSSION

##### **City of Santa Clara Charter - Vacancies & Elections**

City Charter section 703 ("Vacancies") requires that any vacancy in an elective office of the City, including Mayor, City Council, Chief of Police, and City Clerk, from whatever cause arising, be filled by appointment by the City Council by a four-fifths vote. Accordingly, a vote of six of the seven Councilmembers will be required to make an appointment. If the Council fails to fill the vacancy by appointment within thirty (30) days after the office is declared vacant, the City must "forthwith" cause an election to be held to fill such vacancy. The Charter does not define the term "forthwith."

City Charter section 600.01 calls for a regular election (i.e. general municipal election) to be held on the first Tuesday following the first Monday in November of even numbered years. All other municipal elections that may be called under the Charter or CA Elections Code are referred to as a "special election".

City Charter section 700 sets forth that except as specifically provided otherwise in the Charter with respect to City elections, the provisions of the California Elections Code, as amended from time to time, are adopted.

##### **Elections Code**

##### *Special Elections Must Be Held on Established Election Dates*

All state, county, municipal, district, and school district elections shall be held on an established election date, unless an exception applies. Elections Code § 1002. Exceptions include special elections called by the Governor, certain school governing board elections, county, municipal, district, and school district initiative, referendum, or recall elections, and, the most pertinent to the City, elections held in charter cities with charter provisions inconsistent with the Elections Code. Elections Code § 1003.

The City, a charter city, does not have any inconsistent provisions relating to when to hold an election to fill a vacancy. Charter section 703 requiring an election to be held “forthwith” is not a charter provision inconsistent with the Elections Code because the Charter does not define the term. Furthermore, Charter section 600.02 explicitly authorizes that “any special election may be consolidated with a general municipal election and any municipal election may be consolidated with any State, County, or School District election held in the City or part thereof...” which indicates that special elections are not required to take place outside of established election dates. Accordingly, any such elections must be held on established election dates, which are as follows (Elections Code § 1000):

- (a) The second Tuesday of April in each even-numbered year.
- (b) The first Tuesday after the first Monday in March of each odd-numbered year.
- (c) The first Tuesday after the first Monday in November of each year.
- (d) The first Tuesday after the first Monday in March in each even-numbered year.

The established election dates for 2020 are **March 3, 2020, April 14, 2020** and **November 3, 2020**.

### Chief of Police Vacancy

If the City Council does not appoint someone to fill the Chief of Police vacancy by a four-fifths vote (6 votes of a 7-member council), the Council must declare an election to fill the vacancy and the election must take place forthwith, i.e. on the next possible established election date. The November 5, 2019 election deadlines have already expired, so the next established election date is March 3, 2020, which is the presidential primary election.

Given the effective date of resignation being September 1, 2019, the City Council must declare the vacancy by September 4, 2019, which would have to be called as a special meeting. After declaring the vacancy, the City Council will have 30 days to fill the vacancy by appointment. If the Council does not fill the vacancy by appointment in that time frame, the Council must call an election. Please see the table below for all relevant dates for the March 3, 2020 election. The City’s election to fill the vacancy may be consolidated with the statewide presidential primary election.

### March 3, 2020 Special Election Schedule

The following is a table of the relevant dates for the March 3, 2020 election if the Council does not make an appointment.

Effective Date of Resignation	September 1, 2019
Council Declares Vacancy	September 3 or 4, 2019 (Special Meeting)
Call Election and Request to Consolidate with the County	Last day for Council to adopt resolutions Council meeting October 8
Publish Notice of Election at least once in newspaper	October 28-November 11, 2019
Filing period for nomination papers and candidate statement opens	October 28, 2019

Last day to file nomination papers and candidate statement	December 6, 2019
Write in Candidacy Period	January 6, 2020 - February 8, 2020
Last day to register to vote for March Election	February 17, 2020
Last day to publish notice of nominees in newspaper	February 25, 2020
Election Day	March 3, 2020

**ENVIRONMENTAL REVIEW**

This is an information report only and no action is being taken by the City Council and no environmental review under the California Environmental Quality Act ("CEQA") is required.

**FISCAL IMPACT**

There is no fiscal impact to this informational report, but there will be a fiscal impact if a special election is called.

**COORDINATION**

This report has been coordinated with the City Attorney's Office, the City Manager's Office, and the City Clerk.

**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.

**RECOMMENDATION**

Note and file this informational report.

Approved by:

Brian Doyle, City Attorney

Hosam Haggag, City Clerk

**ATTACHMENTS**

1. Chief Sellers email to Department Staff
2. Press Release - Chief of Police Retirement