



## Agenda Report

20-192

Agenda Date: 2/11/2020

### REPORT TO COUNCIL

#### **SUBJECT**

Declaration of a Vacancy for Council District 5 and Options to fill the Vacancy [Council Pillar: Enhance Community Engagement and Transparency]

#### **BACKGROUND**

Councilmember Patricia Mahan submitted a letter of resignation on January 22, 2020 with an effective date of February 1, 2020, thereby creating a vacancy for Council District 5 for a partial term ending November 2020.

#### **DISCUSSION**

Santa Clara voters on November 8, 2016 passed Measure Q, concerning filling vacancies and amended the City 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.

Santa Clara City 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 February 11, 2020. If Council does not make an appointment by March 12, 2020, then the office will remain vacant until a new Councilmember is elected on November 3, 2020.

#### **Appointment**

The City Charter does not specify any particular process for making an appointment. City Council has engaged in several different processes in the past, including deciding not to appoint. It is staff's

recommendation that the City Council utilize an appointment process similar to the current process for appointments to City Boards and Commissions.

An action to appoint requires a 4/5ths majority vote of the remaining Council Members. Given the Council has only 6 remaining members, four-fifths of 6 is 4.8 which rounds to 5; therefore, an appointment requires 5 affirmative votes.

Past City practice has been to conduct Council interviews during a Council meeting. It should also be noted that the Council may by motion on a 4/5ths majority vote appoint a Councilmember directly on the basis of the written applications and without following the proposed outlined process, as long as an appointment is made before March 12, 2020.

Under the current Charter, the appointee must be a resident of the City and a qualified registered voter of the City. The Superior Court's requires the candidate who runs for and is elected in November 2020 for this seat must reside in District 5. We therefore recommend that Council only consider District 5 residents for appointment.

Staff further recommends the following schedule for proceeding with the appointment process:

February 12, 2020 Solicit applications from interested persons in Council District 5

February 21, 2020 Submission of applications from interested persons for Council District 5 due in the City Clerk's Office by 5:00 p.m.

March 2, 2020 Conduct a special City Council meeting at 5:00 p.m. to interview and appoint one candidate to fill the partial term ending November 2020

### **Election**

If the City Council does not appoint anyone to the office by March 12, 2020, the position will remain vacant until the November 3, 2020 election.

### **FISCAL IMPACT**

The fiscal impact will depend on the City Council's determination. If the City Council chooses to appoint to fill the vacancy, the cost would be limited to the staff time necessary to implement the appointment process. If the City Council does not choose to appoint, there will be no additional cost to the City, the November election has been budgeted.

### **COORDINATION**

This report was 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.

**RECOMMENDATION**

1. Declare District 5 Council seat vacant; and
2. Staff makes no recommendation as to whether Council should pursue the appointment process or choose to keep the seat vacant until the November 2020 election.

Reviewed by: Brian Doyle, City Attorney

Approved by: Hosam Haggag, City Clerk