



**MEMORANDUM**

**DATE:** May 18, 2021  
**TO:** Christine Daniel, City Manager  
**FROM:** Sheri Hartz, City Clerk  
**SUBJECT:** **Discussion and Direction On How To Fill A City Council Vacancy;  
Government Code Section 36512**

**RECOMMENDATION**

Staff recommends that the City Council review the information provided in this report concerning how to fill a vacant seat on the City Council and provide direction about the process for filling the vacancy.

**BACKGROUND**

At the May 4, 2021 City Council meeting, Councilmember Christian Patz announced his intent to resign from the City Council due to a new employment opportunity causing him to relocate his residence outside of Emeryville. Mayor Martinez requested, and received majority support for, a report providing an overview of the process for filling a City Council vacancy at the next regularly scheduled City Council meeting. This item responds to that request.

**DISCUSSION**

Options to Fill the Vacancy

Government Code Section 36512 establishes the process for filling a City Council vacancy. Generally speaking, a city council has two options: (1) fill the vacancy by appointing someone to the position; or (2) fill the vacancy by holding a special election.

If a vacancy occurs in an elective office provided for in this chapter, the council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy.

(Government Code section 36512(b).)

However, Government Code section 36512(d) provides that the Council is not allowed to make an appointment to fill a city council vacancy if the “appointment would result in a majority of the members serving on the council having been appointed.” Currently, the City has three Council Members who were appointed to the City Council. In 2020, under Elections Code Section 10229, the Council cancelled the election and appointed Council Members Bauters, Medina and Patz because the election was uncontested. (Resolution No. 20-87). Although the Elections Code provides that these appointed councilmembers serve as if they were elected, for purposes of filling a vacancy under Government Code section 36512, the three Council members are considered appointments.

There are two options to fill a vacancy when an appointment cannot be made:

- The city council may call an election to fill the vacancy, to be held on the next regularly established election date not less than 114 days after the call.

OR

- If the city council does not call an election pursuant to paragraph (2), the vacancy shall be filled at the next regularly established election date.

(Government Code Section 35612, subsections (d)(2); (d)(3).)

### The Timing for an Election

The Elections Code defines the established election dates as follows:

(a) The first Tuesday after the first Monday in March of each even-numbered year that is evenly divisible by four.

(b) The first Tuesday after the first Monday in March of each odd-numbered year.

(c) The second Tuesday of April in each even-numbered year.

(d) The first Tuesday after the first Monday in June in each even-numbered year that is not evenly divisible by four.

**(e) The first Tuesday after the first Monday in November of each year.**

(Elections Code Section 1000, emphasis added.)

Accordingly, as of the date of this staff report, the date of the next regularly established election is **November 2, 2021**.

### Local Ordinance option

Staff researched whether the City Council could adopt a local ordinance under Government Code Section 36512(c)(3) addressing how to fill City Council vacancies. This section allows for an appointment to be made until the special election to fill the vacancy is conducted, after which time the individual who was elected fills the vacancy.

“Provides that a person appointed to fill a vacancy on the city council holds office only until the date of a special election which shall immediately be called to fill the remainder of the term. The special election may be held on the date of the next regularly established election or regularly scheduled municipal election to be held throughout the city not less than 114 days from the call of the special election.”

However, staff is advised that subsection (c)(3) is overridden by the more specific rule established in subsection (d)(1), addressed above, prohibiting a majority of the Council from being appointed. Thus, in the current circumstance, adopting a local ordinance addressing how to fill vacancies does not appear to add any options to the required process.

### Next Steps to Prepare for an Election To Fill the Vacancy

The City Council has 60 days following the commencement of a vacancy to fill the vacancy by calling an election or simply allowing the seat to be filled at the next regularly established election. The Councilmember's office will be considered vacant upon the effective date of the Councilmember's resignation, as provided for in the Council member's letter of resignation delivered to the City Clerk. (Government Code section 1770(c)(1).)

As noted above, Government Code Section 35612 subsections (d)(2) and (d)(3) set forth the relevant options for an election to fill a vacancy. If the Council decides to call the election, subsection (d)(2) provides that the election is "to be held on the next regularly established election date not less than 114 days after the call...."

The next regularly established election date is November 2, 2021. To meet that date, the election would need to be called by the Council at its July 6, 2021 meeting, which is 119 days prior to November 2, 2021. Alternatively, the Council could choose not to call the election. However, the Government Code then provides that the seat "shall be filled at the next regularly established election date" which is also November 2, 2021.

For a November 2, 2021 election, the nomination period would open on July 13, 2021 and close on August 6, 2021.

Should the Council seat become vacant prior to the July 6, 2021 Council meeting, staff recommends that the Council call the election at that meeting. This will provide specific authority to City staff to undertake necessary actions to implement the election process as well as provide the public clarity about the process. The Resolution calling the election would include requesting that the Alameda County Registrar of Voters (ROV) perform certain election services on behalf of the City of Emeryville in connection with the November 2, 2021 election; and authorizing the City of Emeryville to reimburse the ROV for election services performed, appropriating the necessary funds to pay the ROV for those services.

### **FISCAL IMPACT**

The Alameda County Registrar of Voters provides cost estimates for elections on its website. For a stand-alone special election, the costs are estimated at \$19-\$21 per voter. For Emeryville that would mean costs ranging from \$138,358 to \$152,922 based on 7,282 registered voters.

### **STAFF COMMUNICATION WITH THE PUBLIC**

Staff has had no communication with the public on the content of this report.

### **CONFLICT OF INTEREST**

None applicable.

### **CONCLUSION**

Staff recommends that the City Council review the information provided in this report concerning how to fill a vacant seat on the City Council and provide direction about the process for filling the vacancy.

**PREPARED BY:** Sheri Hartz, City Clerk

### **APPROVED AND FORWARDED TO THE CITY COUNCIL OF THE CITY OF EMERYVILLE:**



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Christine Daniel, City Manager

### **ATTACHMENTS**

- Attachment A – Text of Government Code Section 36512