

ALBANY CALIFORNIA



CITY OF ALBANY
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DATE: September 18, 2023

MEMORANDUM

To: Albany City Council Members

From: Mayor Aaron Tiedemann and Council Member Preston Jordan

Re: Procedures for Filling a Vacant Seat on the City Council by Appointment

RECOMMENDATION

That the Council discuss and confirm the framework for procedures to fill a vacant seat on the City Council by appointment and direct staff to prepare an ordinance for Council consideration at a subsequent meeting.

An additional proposed recommended action is to direct staff to prepare an ordinance amending Municipal Code Section 7-3.6 to assure the provision of runner up election results for use implementing the first runner up appointment approach.

BACKGROUND

[Charter Section 5.02](#) requires that a vacancy on the City Council “shall be filled by appointment by the Council; such appointee to hold office until the next feasible general municipal election, when a successor shall be chosen by the electors for the unexpired term”. After the unfortunate passing of City Council member Peggy Thomsen, the Council adopted an appointment process for filling her seat on June 16, 2014, and appointed an applicant to serve the remainder of her term on July 9th.

As a result of this event, the Council recognized the need for a standardized procedure for filling a vacancy rather than adopting a new process with every vacancy. The Council therefore included the following amendment to Charter Section 5.02 in Measure Q1 of 2016: “The Council shall by ordinance establish procedures for filling a vacancy by appointment.” The voters subsequently approved this measure however, no such ordinance was passed.

On October 17, 2022, City Council Member Ge’Nell Gary announced her resignation with her last day of service being November 7, 2022. Without the ordinance required by the voters’ approval of Measure Q1 having since been adopted, the Council researched approaches and discussed two alternative processes for filling a vacancy in a special meeting on November 9, 2022. One approach involved people interested in appointment to the Council submitting applications, after which the Council would interview the applicants and make an appointment. The other involved appointing the first runner up of the most recent election for vacancies within six months of the certification of results provided that a certain threshold of voters supported the runner up.

The Council also considered requiring a special election to fill a vacancy, but ultimately this option was dismissed for a variety of reasons. One of the largest was the expense and difficulty of administering an election outside of the regular cycle, for which the Registrar would charge substantially more than they do for running an election consolidated with those of other jurisdictions (such as the general election in November of even years). Another substantial downside of this approach that was mentioned was the inherent difficulty such elections posed to ensuring the entire City was engaged. Midterms and special elections routinely have lower rates of voter participation and interest as the lack of a top of ballot race makes many voters tune out.

The Council subsequently directed staff to draft an urgency ordinance including both the runner up appointment approach for the six-month period after election and the application, interview, and appointment approach for the remainder of the time. Staff subsequently brought back the proposed ordinance for Council deliberation on November 15, 2022. Instead of passing the ordinance as presented, Council chose to follow the proposed procedure to appoint the first runner up from the General Election, but declined to enshrine this approach or the appointment process discussed in the Municipal Code. Instead, the Council passed [Ordinance No. 2022-09](#) on urgency “specifically and solely” to address the vacancy at the time.

DISCUSSION

The procedure of appointing the first runner up if they receive a set threshold of voter support if a vacancy occurs within a certain amount of time following an election is based on that included in the [City of Alameda’s Charter](#). The process for filling non-election proximate vacancies closely matches much of the [procedure used by the Alameda County Board of Supervisors](#) earlier this year to appoint a replacement after the passing of Supervisor Richard Valle while in office.

The Board of Supervisors drafted its vacancy-filling policy after having undergone a similar appointment process several months before due to the passing of Supervisor Wilma Chan while in office. Consequently, the process the Board subsequently adopted after the passing of Supervisor Valle represents a rare, though unfortunate, occasion when a local legislative body with largely the same membership went through the process of filling a vacancy by appointment and then had to do so again. As a result of this, the Board took the opportunity to improve upon the process it used in the first instance for its use in the second instance.

The process adopted by the Board uses a similar schedule of publicly posting application materials, then receiving, posting and considering applications, followed by a public Board meeting to hear from and

interview candidates. While the Board of Supervisors had a more involved process of nominations and field narrowing for its final selection, this has not been recommended here due to the lower likelihood of a pool of candidates large enough to merit such a procedure. It is advised that an ordinance be prepared to outline the procedure for appointment, including the attached procedure.

First Runner Up Approach

If a vacancy occurs forty-five days or less before the certification of election results or within six months after certification, the Council shall appoint the candidate who received the highest number of final votes but was not elected, provided that said candidate received three-quarters of the election threshold for that election. In a year electing three council members, this would mean the fourth placed candidate who received votes equal to at least 18.75 percent of those in the first round, while in a year electing two council members this would mean the third placed candidate who received votes equal to at least 25 percent of those in the first round. This was deemed the best method to follow the will of the voters by taking advantage of a proximate and regular election. If no candidates meet the required threshold, the Council would revert to the appointment process described next.

The attached procedure contains a minor change to the runner up approach relative to the approach considered by the Council in 2022. If two vacancies occur at once, and both are within the timeframe to use this approach, the first vacancy shall be appointed using the certified election results, while the second shall be filled via the application process specified for non-election proximate vacancies and summarized next. This addition is necessary due to the impossibility of two runner-up candidates meeting the three-quarters threshold specified.

If the Council directs staff to prepare an ordinance that includes the first runner-up appointment approach, it should also direct staff to prepare an ordinance amending Municipal Code Section 7-3.6 (“Ranked Choice Voting Elections”) to assure the provision of election suitable for this use. The Section currently stops counting when the seats are filled, at which time there may be multiple runners up splitting the remaining vote. Specifying continuing the count down to one candidate more than there are seats to be filled will determine if they have secured the necessary share of the election threshold to be appointed.

Application Approach

When a vacancy occurs more than forty-five days before or six months after the certification of an election, the Council would follow a process to solicit applications, during an application period of two weeks, before making applications public and conducting interviews at a regular or special meeting with Q&A moderated by the Mayor. After this process, which would include a chance for each of the candidates to address the Council publicly, the Council would vote for an appointee via open balloting. While this process defines the application period, it does not mandate the timing of meetings to consider applicants, allowing some flexibility.

Balloting would be limited to a maximum of ten rounds to prevent deadlock. After ten rounds, if no candidate receives a majority of votes, the Mayor is required to make the appointment at their sole discretion. This flows from the following provision in Charter section 5.02: “If the Council fails to agree or for any other reason does not fill such vacancy within sixty (60) days after the same occurs, then such vacancy shall be filled by the Mayor.” By this provision, if the Council is deadlocked the Charter

requires the Mayor to fill the vacancy by appointment. The procedure in the ordinance shortens this time to that when the Council has the opportunity to make the appointment but a majority of the body is unable to come to agreement.

SUSTAINABILITY CONSIDERATIONS

The recommended action does not have sustainability implications.

SOCIAL EQUITY AND INCLUSIVITY CONSIDERATIONS

Providing for appointment of the first runner up at the most recent election honors the choice of the voters. Because Albany uses proportional ranked choice voting, this will tend to maintain a diversity of perspectives on the Council that represents those held by the electorate.

CITY COUNCIL STRATEGIC PLAN INITIATIVES

The recommended action does not have sustainability implications.

FINANCIAL CONSIDERATIONS

The recommended action does not have financial implications.

Attachment:

1. Draft Procedure for Appointment

Procedure for Filling a Vacant Seat on the City Council by Appointment

In accordance with the Albany City Charter Section 5.02, the following outlines the procedures for filling vacant seats on the City Council by appointment. Upon notification that a member of the Albany City Council has vacated office, the following procedures shall be followed:

- 1) If a vacancy on the City Council occurs within 45 days before the certification of the election to 182 days after certification of an election, it shall be filled by the City Council by appointment of the candidate not elected for a contested City Council seat who received the highest number of votes, provided said candidate received at least three-fourths (3/4) of the election threshold as defined in Municipal Code Section 7-1.4.
 - a. If no candidate received three-fourths of the election threshold or a second vacancy occurs within the time period, the Council shall follow the procedures specified in Paragraph 3 below.
- 2) If there are two vacancies simultaneously within 45 days before the certification of the election to 6 months after certification of an election, the first shall be filled using the procedure specified in Paragraph 1 above, while the second will be filled using the procedure specified in Paragraph 3 below.
- 3) If a vacancy occurs outside the time period specified in Paragraph 1, no runner up in that period receives the threshold of voter support required for appointment in that period, or a second vacancy occurs in that period, the Council shall follow the procedure specified in this paragraph.

- a. Application: an application will be developed and distributed that shall generally request information from the candidate regarding qualifications for and interest in serving on the City Council.
- b. Application Period: the application period shall be for a duration of two weeks
- c. Application Publishing: upon receipt of completed applications, the City Clerk shall post the name of applicant on the City's website, with the option to also include the candidate's email if authorized by the candidate. After the close of the application period, all applications received shall be posted to the same webpage.
- d. Applicant ability to withdraw: applicants shall have the ability to withdraw themselves for consideration of appointment to the vacant seat on the City Council. This withdrawal must be submitted in writing to the City Clerk.
- e. Selection process: the City Council shall hold a public meeting to review all applications received and conduct the following steps towards selection of an appointee:
 - i. All applicants shall address the City Council with an opening statement that indicates their interest in serving as a Member of the City Council;
 - ii. The City Council will conduct a question-and-answer period with the applicants, which is to be moderated by the Mayor, or the Vice Mayor in the case of a vacancy in the position of Mayor.
- f. Balloting: in the meeting after the question-and-answer period, the City Council shall conduct a repeated open balloting process to appoint an applicant to the vacant seat of the City Council. The repeated balloting process shall include up to 10

rounds of balloting. If a tie exists after 10 rounds of balloting, then the Mayor, or the Vice Mayor in the case of a vacancy in the position of Mayor, shall select the applicant that the City Council shall appoint.