



Department: Administration
Cost Center: 1021
For Agenda of: 9/7/2021
Placement: Business
Estimated Time: 30 minutes

FROM: Greg Hermann, Deputy City Manager
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SUBJECT: PROCESS TO FILL A COUNCIL (MAYOR) VACANCY

RECOMMENDATION

Approve a process to fill the vacancy on City Council resulting from the resignation of Mayor Heidi Harmon, effective at the end of business September 26, 2021.

REPORT IN BRIEF

Mayor Heidi Harmon announced on August 26, 2021, that her last day in office would be September 26, 2021. The announcement creates a vacancy that must be filled by either appointment or special election. This staff report provides the Charter and Council Policies and Procedures requirements and some details about past practice. Attachments include specific excerpts from the Charter and Council Policies and Procedures Manual, and a draft application should Council elect to fill the vacancy via appointment.

DISCUSSION

On August 26, 2021, Mayor Heidi Harmon announced her intention to resign her position as Mayor effective at the end of business September 26, 2021. As a result, the Mayor's seat vacancy will exist on September 27, 2021.

City Authority

The City's Charter and Council Policies and Procedures govern the process for filling City Council vacancies.

Charter Section 406 states (Attachment A):

"... the Council by a majority vote of its remaining members shall appoint a qualified person to fill the vacancy until the person elected to serve the remainder of the unexpired term or new term takes office."

"If the Council fails to fill the vacancy within thirty (30) days following its occurrence, it shall call a special municipal election to fill the vacancy, to be held not sooner than ninety (90) days or not later than one hundred and fifty (150) days following the occurrence of the vacancy."

Section 3.3 of Council Policies and Procedures establishes a specific process for conducting an appointment to the City Council, as follows: (Attachment B)

1. At least ten days before Council meets the first time to select a replacement member for a vacancy, the City shall advertise the vacancy in a local newspaper.
2. The minimum qualifications for appointment are residency in the city at least 30 days prior to appointment and elector status at the time of appointment.
3. Each applicant shall submit a written statement of 500 words or less affirming the amount of time available each week to devote to the Council; reasons for wanting to be appointed; involvement in community affairs and organizations, especially in the preceding 23-month period; personal qualifications for the position and prior experience in government¹, or areas associated with or doing business with government.
4. Meetings to consider the selection of an applicant shall be open to the public.
5. Applications shall be given to the Council and be available to the public at least four days before the opening of the meeting.
6. Members of the public may submit written comments regarding an application up to 24-hours before the meeting begins.
7. At the meeting, each applicant is to be given five minutes to make a presentation to Council and will be asked to verify their willingness to serve.
8. Thereafter, all discussion shall be confined to the Council except for questions directed by the Council to staff or to members of the public.²
9. Upon conclusion of the discussion, Mayor/Vice Mayor shall open the floor to nominations by the remaining Council Members

Details not specifically enumerated in the City Charter or Council Policies and Procedures that the Council may wish to consider:

- A. The format of an application is not set forth; therefore, staff suggests using the Application for Appointment (Attachment C), which will provide a basic structure to be followed by the applicants.
- B. The application requests that the applicant attach a resume, as was requested in the prior processes.
- C. The City Clerk will review the applications for completeness and eligibility and prepare copies for each Council Member. There is no direction regarding type of coversheet desired by Council to be used in their review and deliberations of the applications. The City Clerk offers the possibility of a spreadsheet with the names of applicants running down the left side of the page and empty boxes to be used by Council Members to write their own notes.

¹ Such as working as a government affairs liaison or serving on committees, commissions, or other work in government.

² Public comment on the appointment should be accepted at any time prior to Council making nominations and acting, in accordance with the Brown Act.

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- D. While it is set forth that members of the public may submit written comments at any time until 24-hours before the meeting, public comment on the appointment should be accepted at any time prior to Council making nominations and taking action, in accordance with the Brown Act.
- E. Council may prescribe a set amount of time for public comment at the meeting if there is a large applicant pool and Council wishes to manage the meeting time.
- F. The Council Policies and Procedures do not specify the way Council is to narrow the applicant pool to arrive at consensus, but staff's review of the records of past appointments did identify a procedure that seemed to have been efficient and effective. In previous processes, the Council followed a voting process as outlined below.
- G. Should the Council successfully nominate and appoint an applicant, the City Clerk could immediately administer the Oath of Office to the newly appointed Council Member.

Suggested Process

Proposed Timeline. The following table sets out a calendar of events for the proposed appointment process. This calendar was created to afford potential applicants time to do their due diligence, as well as maximize time the City Council has to consider the applications received. This timeline can be modified to shorten some of the timeframes such that the appointment could be made sooner and is at the discretion of the City Council. Staff will be prepared to assist with mapping out alternative timelines should the Council wish to consider other options.

Date	Action
Tuesday, September 7, 2021	Council to adopt a process (i.e., appointment or direction to call special election) to fill the unexpired term.
Thursday, September 9, 2021	Publish Notice of Vacancy effective September 27, 2021, in Newspaper; post on City's website (slocity.org) and in the kiosk outside City Hall. Invite eligible persons to complete and submit an application for appointment.
Friday, September 10, 2021, through September 24, 2021	Receive applications for appointment in the City Clerk's Office
Monday, September 27, 2021	City Clerk will verify residency and voter registration requirements of applicants.

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Date	Action
Tuesday, September 28, 2021	Publish City Council Agenda for October 5, 2021, Regular Meeting, and post applications of validated applicants. Applications will be available for public review in the City Clerk’s office and on slocity.org.
Wednesday, September 29, 2021 through October 5, 2021	Council Members will individually evaluate the applications and resumes. If a Council Member has a question for one of the candidates, the question(s) should be addressed to the individual applicant with an understanding that each Council Member will make a report at the public hearing about their individual conversations with applicants.
Tuesday, October 5, 2021	Written public comments regarding applications to be accepted in the City Clerk’s Office until 5:00 p.m.
Tuesday, October 5, 2021	If a candidate is appointed – the City Clerk will administer the Oath of Office to the new Council Member
Tuesday, October 12, 2021, Tuesday October 19, 2021, or Tuesday October 26, 2021	If no candidate is appointed on October 5, 2021, an additional meeting(s) of the Council could be held before Wednesday, October 27, 2021.
	<p>In no candidate is appointed by Wednesday, October 27, 2021, a Special Election would be triggered.</p> <p>A special election will need to be held between 90 and 150 days of the vacancy (September 27, 2021). (December 26, 2021 – February 24, 2022)</p> <p>An election must be called 88 days before the date of the election, therefore, the earliest the election could be called if triggered by the September 27, 2021 date, would be September 29, 2021 and as late as November 28, 2021.</p>

Proposed process for the City Council Meeting on October 5, 2021.

The following steps are suggested in conducting the Regular Meeting on October 5, 2021, should the Council determine to fill the vacancy via appointment. These steps are based upon procedures followed during the previous appointment processes.

1. Council Members will be asked to disclose any ex-parte communications with individual applicants including general explanation of the substance of any communications.
2. Each candidate will make an oral presentation of no more than five minutes. There will be no questions from Council Members of applicants, since there will have been ample time for Council Members to have asked questions in the time between the application deadline and the meeting.
3. Hear public comments at the meeting in accordance with the Brown Act.
4. After public testimony, the matter will be brought back to City Council for deliberation.
5. Each Council Member will announce, and the City Clerk will record, a list of up to three applicants that they can support, in alphabetical order.
 - a. If three (3) or more Council Members name the same applicant and only one applicant received three (3) votes, the Mayor/Vice Mayor will call for a motion to appoint that person.
 - b. If more than one applicant receives three (3) or more votes, these applicants should be further discussed until an appointment is made (either via more votes of a favored applicant from each Council Member or consensus from deliberations).
 - c. If no candidate gets three (3) or more votes, the Council can expand the list by engaging in additional rounds of listing applicants. Any applicants identified in the first round would continue to be considered if there are two or more straw votes in their favor.
 - d. At any time during the vote process a Council Member could change their mind regarding an acceptable applicant and express support for any applicant.
 - e. A Council Member can propose a motion in favor of any applicant at any time.
6. If a candidate is appointed, the City Clerk shall administer the Oath of Office to the new Council Member who would be seated immediately.

Policy Context

As indicated above the City's Charter and Policies and Procedures outline the process for Council appointments.

Public Engagement

The notice of the vacancy was announced by the Mayor on August 26, 2021. A Notice of Vacancy will be published no less than 10 days before the meeting where the Council will consider the appointment if Council pursues this option. Members of the public can submit public comment at any time prior to the meeting where the appointment will be considered.

If a special election is preferred, staff will return prior to October 27, 2021, with a resolution to call a special election and the projected costs to administer a special election. A special election is estimated to cost between \$150,000-\$200,000 in direct costs.

CONCURRENCE

The City Manager and City Attorney both concur with staff’s recommendation.

ENVIRONMENTAL REVIEW

The California Environmental Quality Act does not apply to the recommended action in this report, because the action does not constitute a “Project” under CEQA Guidelines sec. 15378.

FISCAL IMPACT

Budgeted: No
Funding Identified: No

Budget Year: 2021-22

Fiscal Analysis:

Funding Sources	Total Budget Available	Current Funding Request	Remaining Balance	Annual Ongoing Cost
General Fund	\$	\$150,000-\$200,000	\$	\$
State				
Federal				
Fees				
Other:				
Total	\$	\$	\$	\$

If the Council makes an appointment to fill this vacancy, there will be minimal fiscal impacts. A special election, however, will result in an unbudgeted expense estimated to be between \$150,000-\$200,000 that would need to be appropriated from unassigned fund balance. This estimate does not include City staff time or additional assistance needed in the City Clerk’s Office.

ATTACHMENTS

A - Section 406. Vacancies of the San Luis Obispo Charter

B - Section 3.3.3 Appointment or Special Election from the Council Policies and Procedures

C - Draft Application for Appointment