



STAFF REPORT

SAUSALITO CITY COUNCIL

AGENDA TITLE:

Procedures Regarding the Filling of a City Council Vacancy.

RECOMMENDED MOTION:

Provide Staff direction regarding the options available to fill the vacancy.

SUMMARY

Last month, Councilmember Amy Belser announced her resignation, effective June 30 2009.

Under existing State law and in the absence of a local ordinance upon the effectiveness of the resignation, the Council may either:

- (i) leave the office vacant and set a special election to be held after at least a 114 day period has elapsed, or
- (ii) appoint a new member within 30 days to serve out the remainder of Councilmember Belser's term – that is until November 2012.

Additionally, State law allows the City to adopt a local ordinance modifying these general rules in one of three ways:

- (i). first, a city may require that vacancy be filed only by a special election;
- (ii) secondly, the special election may be called based on the filing of signed petitions; and,
- (iii) lastly, the Council can make an interim appointment until such time as the special election is held so that the office would not be vacant while awaiting the special election.

Because of the upcoming deadlines, the City Council should discuss and provide direction to staff regarding the preferred method of moving forward with filling the vacancy. The Council cannot actually take action on filling the vacancy until Councilmember Belser's resignation is effective on June 30, 2009. A more complete discussion of the options and deadlines is set forth below.

BACKGROUND

Last month, Councilmember Belser announced her desire to resign as a member of the City Council. A formal letter of resignation was submitted to the Deputy City Clerk as required by State law and the resignation will be effective on June 30, 2009.

Following the effective date of the resignation, the City Council is required by State law to immediately take step towards filling that vacancy. Several options exist that should be considered by the Council.

ANALYSIS

The Sausalito Municipal Code does not make any provision for filling City Council vacancies. Accordingly, Council vacancies are currently controlled solely by State law. Government Code Section 36512(b) requires that, in the absence of a local ordinance,

“the council shall, within 30 days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy. The special election shall be held on the next regularly established election date not less than 114 days from the call of the special election. A person appointed or elected to fill a vacancy holds office for the unexpired term of the former incumbent.”

While the statute provides for a 30 day window to decide on an appointment or special election, in order to hold the election within the next regular election cycle (November 3, 2009), the Council will need to call for the special election by July 12, 2009 so that the 114 day interim period is satisfied.

Section 36512 also provides that a city may adopt an ordinance that deviates from the general rule. Three difference scenarios are allowed:

- The City can mandate that vacancies be filed by special election in all cases, thereby prohibiting the appointment of a position. The special election would be held on the next regularly established election date not less than 114 days from the call of the special election.
- A special election would be held to fill the vacancy when petitions bearing a specified number of verified signatures are filed. Again, the special election would be held on the next regularly established election date not less than 114 days from the filing of the petition,
- Council may appoint someone to fill the vacancy, but only until the date of the special election. If there is an appointment, the special election must be either 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.

In order to comply with State law and potentially take advantage of one of the options available by amending the Municipal Code, the Council will need to determine the best course of action within a relatively tight time frame. In particular, an ordinance amendment would necessitate very quick action. Key dates are set forth below:

Regularly scheduled City Council meetings available to adopt an urgency ordinance amending Municipal Code to adopt one of the scenarios provided under Section 36512 and maintain special election schedule for November 3, 2009 election date (<i>4/5 vote required</i>).	June 23, 2009 or July 7, 2009
Last day to adopt an urgency ordinance amending Municipal Code to allow for alternative scenarios provided under Section 36512 and maintain special election schedule for November 3, 2009 election date (<i>4/5 vote required</i>).	July 12, 2009 (<i>regularly scheduled City Council meetings on June 23, 2009 and July 7, 2009</i>)
Time period in which the Council must meet for the purpose of calling a special election on November 3, 2009	July 1, 2009 – July 12, 2009 (<i>regularly scheduled Council meeting on July 7, 2009</i>)
Time period in which the Council must meet for the purpose of calling a special election on April 13, 2010 (<i>next regularly scheduled election date after November 3, 2009</i>)	July 13, 2009 – July 30, 2009 (<i>regularly scheduled Council meeting on July 21, 2009</i>)
Time period to appoint a replacement for the Council vacancy for the remainder of Councilmember Belser's Term – November, 2012	July 1, 2009 – July 30, 2009

In addition, to the timeline facing the Council, the Municipal Code does not provide for a Council vacancy selection and appointment process. Should the Council determine that

an appointment will be made (either until the November 3rd or April 13th election or to fill out the term), the Council may desire to use an application process similar to the application process used for appointments to City Boards and Commissions.

FISCAL IMPACT

None. However, if the Council decides to call for a special election there will be costs associated with that election that are currently unknown.

LEGAL ISSUES

Any proposed amendment to the Municipal Code would need to be processed as an urgency ordinance (effective immediately) in order to meet the July 12, 2009 deadline for calling the special election utilizing the November 3, 2009 election date. If directed by the Council, the ordinance would be presented at the June 23, 2009 regular meeting and would require a four-fifths vote of the City Council.

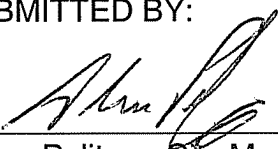
STAFF RECOMMENDATIONS

1. Direct Staff to schedule a special meeting after commencement of the vacancy (June 30, 2009) and prior to July 12, 2009;
2. Direct Staff as to whether or not the Council requests an amendment to the Municipal Code be prepared consistent with the alternatives available under Government Code Section 36512, and, further, whether such ordinance should be presented as an urgency ordinance on the June 23, 2009 or July 7, 2009 regular meeting agenda or at a special meeting prior to July 12, 2009;
3. Direct Staff regarding the appropriate application process in the event that the Council determine to make an appointment to fill the vacancy (either temporarily or for the entire term).

PREPARED BY:

Mary Anne Wagner, City Attorney

SUBMITTED BY:



Adam Politzer, City Manager

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Meeting Date: _____
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