

MEMORANDUM

TO: CITY COUNCIL

FROM: HEATHER WHITHAM, CITY ATTORNEY
JAMES BERGMAN, CITY MANAGER
KELLY WETMORE, DIRECTOR OF LEGISLATIVE AND INFORMATION SERVICES

SUBJECT: SELECTION OF METHOD FOR FILLING VACANCY ON THE CITY COUNCIL

DATE: DECEMBER 11, 2018

SUMMARY OF ACTION:

Selection of a method for filling a vacant seat on the City Council created by the election of Council Member Ray as Mayor in the November 6, 2018 General Municipal Election.

IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:

There is no cost impact for filling the vacancy by appointment. other than nominal costs that may be associated with a process that Council determines is appropriate. Should the Council choose to call a special election, the San Luis Obispo County Clerk has provided an estimate of approximately \$120,000 to conduct a standalone election for the City in November 2019.

RECOMMENDATION:

It is recommended that the Council receive information regarding the options for filling a Council vacancy, make a determination as to how to fill the Council vacancy, and provide direction to staff accordingly.

BACKGROUND:

On December 11, 2018, the City Council adopted a Resolution declaring the official results of the City's November 6, 2018 General Municipal Election and the City Clerk installed the newly elected officials. Council Member Caren Ray was sworn in as Mayor resulting in an immediate vacancy of her City Council seat, which has two years left remaining in the term.

ANALYSIS OF ISSUES:

California Government Code Section 36512 provides the methods by which a vacancy on a City Council may be filled. Specifically, the City Council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call a

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special election. 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. In this case, the next regularly established election date would be November 5, 2019. A person appointed or elected to fill a vacancy holds office for the unexpired term of the former incumbent.

If the Council were to choose to fill the vacancy by calling a special election, it would require that the City contract with the County of San Luis Obispo to conduct a standalone election for the City. The County Elections Official estimates the cost of a special election to be approximately \$120,000. In the meantime, the Council would continue to operate with four members until a new council member is elected.

At this meeting, the Council has the ability to make a decision regarding whether to appoint someone to fill the vacancy or to call for a special election. Due to the cost and timing for conducting a special election, it is not recommended the Council pursue a special election to fill the Council vacancy. When past vacancies occurred in 2010 and 2013, the Council chose to fill the vacancies by appointment, primarily due to the financial burden of holding a special election and in order to get the position filled in a timely manner.

State law does not identify any specific appointment procedure that must be followed in filling a vacancy on a City Council. If the Council chooses to appoint an individual to fill the vacancy, the process by which such appointment is made is entirely within the Council's discretion. The appointment can be placed on a future special or regular meeting agenda and the Council can simply take nominations and vote until a nominee obtains three (3) votes; or a notice of vacancy can be published and posted to solicit applications for Council's consideration at a special or regular meeting. Since there is a 60 day time period in which to act, the Council must take action no later than February 8, 2019; therefore, consideration needs to be given to establishing a deadline for submittal of applications, as well as the date at which the applicants will be considered and an appointment made. Council may also wish to consider whether it would like to give applicants for the vacancy an opportunity to make a short presentation, or respond to questions as part of the public process.

The most recent occurrence of a mid-term vacancy of a Council Member in Arroyo Grande occurred in 2013, with the appointment of a Council Member to the County Board of Supervisors. The process approved by the City Council at that time was to conduct an application process to fill the vacancy by appointment. At the conclusion of the process, the City Council made an appointment to fill the seat. The process, from the Council determination to fill the vacancy by appointment to the Council appointment itself, took approximately four weeks.

It is important to note that in considering applicants for appointment to the vacant office, the City Council may not meet in closed session. While under the Brown Act the City Council

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may meet in closed session to consider the appointment of a public employee, an elected official is expressly excluded from the definition of an “employee” (Government Code Section 549587). In addition, the voting process must be open, since the Brown Act prohibits the use of secret ballots (Government Code Section 54953(c)).

ALTERNATIVES:

The following alternatives are provided for the Council’s consideration:

1. Direct staff to post a notice of vacancy, set a deadline for accepting applications for appointment, and place the consideration of applicants and making an appointment on the January 8, 2019 regular meeting agenda;
2. Place the appointment on a future special or regular meeting agenda, take nominations and vote until an appointment is made, contingent on confirmation of City residency and voter registration by the City Clerk;
3. Do not use the appointment process and direct staff to prepare the necessary documents for calling a special election to be held in November 2019; or
4. Provide other direction to staff.

ADVANTAGES:

The advantage of using the appointment process is that it will fill the vacancy in a timely manner providing full representation on the City Council, which better enables the City Council to make important decisions on upcoming projects. The appointment process also eliminates the costs associated with a standalone special election.

DISADVANTAGES:

There are no potential disadvantages identified with the appointment process, other than the City Council rather than the voters will select the City Council representative.

ENVIRONMENTAL REVIEW:

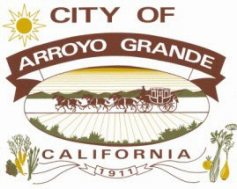
No environmental review is required for this item.

PUBLIC NOTIFICATION AND COMMENTS:

The Agenda was posted in accordance with Government Code Section 54954.2.

Attachments:

1. Draft Notice of Vacancy
2. Application for City Council Member Vacancy Appointment



**NOTICE OF INTENTION TO FILL A VACANCY
FOR MEMBER OF THE CITY COUNCIL BY APPOINTMENT**

NOTICE IS HEREBY GIVEN that the City of Arroyo Grande will accept applications from qualified registered voters for appointment to the City Council to fill the vacancy created by the election of Council Member Ray as Mayor in the November 6, 2018 General Municipal Election.

The term of this Council seat is from the date of appointment to December 2020. Candidates must be at least 18 years of age, reside within the corporate limits of the City of Arroyo Grande, and be registered to vote in the City of Arroyo Grande at the time of application.

To be considered for the position, applicants must attend the City Council meeting on _____, 2019. Each qualified applicant will be asked to make a three (3) minute presentation to the City Council. The applicant may then be asked to respond to questions from the City Council. The order in which the applicants will make their presentation will be determined by a random draw of all the applicant's names. This random draw will take place at the meeting on _____, 2019.

It is the Council's intent to make a selection at this meeting.

Application Period: 8:00 am on Wednesday, December 12, 2018, through 5:00 pm on Thursday, December 20, 2018

Applications are available from: Office of the City Clerk
City of Arroyo Grande
300 E. Branch Street
Arroyo Grande, CA 93420; and

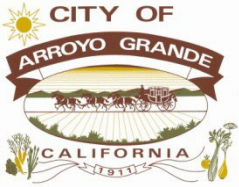
City's website: www.arroyogrande.org

Applications are available at City Hall during normal business hours, Monday through Thursday, 8:00 am to 5:00 pm. City Hall is closed on Friday, December 14, 2018; however, completed applications can be placed in the payment drop-box in front of City Hall.

Original, signed applications must be delivered to the Office of the City Clerk, 300 E. Branch Street, Arroyo Grande (no postmarks, email submissions or faxes accepted).

Application Deadline: 5:00 p.m. on Thursday, December 20, 2018 (no extensions)

For more information, contact the City Clerk's Office at 805-473-5400.



**CITY OF ARROYO GRANDE
APPLICATION TO FILL COUNCIL VACANCY**

Applicant must be a resident and registered voter of the City of Arroyo Grande

Application Deadline: _____, _____, 2018 – 5:00 p.m.

Return to City Clerk's Office, 300 E. Branch Street, Arroyo Grande, CA 93420

NAME: _____ Last First MI	DO YOU RESIDE WITHIN THE CITY LIMITS OF THE CITY OF ARROYO GRANDE? Yes__ No__
ADDRESS: _____ Number Street City Zip	ARE YOU 18 YEARS OF AGE OR OLDER? Yes__ No__ ARE YOU REGISTERED TO VOTE? Yes__ No__
TELEPHONE: Hm () _____ Wk () _____	

Are you now serving on a City Commission/Committee? _____

If so, which? _____

Have you previously served on a City Board, Commission, or Committee? _____

If yes, which body and dates of service? _____

EDUCATION (include professional or vocational licenses or certificates) _____

CURRENT EMPLOYER: _____

EMPLOYER ADDRESS: _____ PHONE: _____

POSITION OR TITLE: _____

Explain your reason(s) for wanting to serve:

QUALIFICATIONS OR EXPERIENCE: (Applicable to the purpose and subject matter of this appointment)

COMMUNITY INVOLVEMENT (List organization memberships and committee assignments)_____

REFERENCES: List three persons, not relatives, who have knowledge of your character, experience, community involvement, and abilities. You may also attach letters of reference and/or a resume (optional). PLEASE OBTAIN PERMISSION FROM INDIVIDUALS BEFORE LISTING THEM AS A REFERENCE.

Name	Address	Phone	Occupation

I hereby declare that the foregoing information is true and complete to the best of my knowledge and belief.

Applicant Signature

Date

Notice to Applicants:

- 1) Applicants appointed by the City Council are required to take an Oath of Office.
- 2) State law and the City's Conflict of Interest Code requires that Council Members file Statements of Economic Interests (Form 700) upon assuming office, annually, and upon leaving office (e.g., sources of income, loans, gifts, investments, interests in real property within the City).
- 3) This application is a matter of public record and portions thereof are subject to disclosure pursuant to the California Public Records Act.

FOR USE BY CITY CLERK'S OFFICE:

(Date Stamp)

Received by: _____