



## REPORT TO CITY COUNCIL

**Approved by:**

*Arnoldo Rodriguez*

Arnoldo Rodriguez, City Manager

**Council Meeting of:** December 2, 2020

**Agenda Number:**         D-3        

**SUBJECT:**

Filling of Councilmember Vacancy in City Council District 5

**RECOMMENDATION:**

That the City Council (Council) consider whether to fill the vacancy in Council District 5 by appointment or by a special election to be held on November 2, 2021. If Council chooses to fill by appointment, approve Resolution adopting a process for filling the vacancy and determine date for filing of applications for inclusion in Resolution. If Council chooses to fill by election, direct staff to present a resolution calling an election to the Council at the next meeting.

**SUMMARY:**

The election of Councilmember Garcia to the Mayor's seat creates a vacancy on the Council for the District 5 Seat. Under state law, the Council must either call a special election or fill the vacancy by appointment before January 31, 2021 (which is within 60 days of the vacancy). The successor councilmember may serve until the expiration of Councilmember Garcia's term, which is December 2022. The person appointed or elected must be:

- a resident of District 5,
- a registered voter, and
- a United States citizen 18 years of age or older.

**DISCUSSION:**

The Council needs to make an appointment or adopt a resolution calling for a special election before January 31, 2021.

## **A. ELECTION PROCESS**

If the Council chooses to fill the vacancy by election, the Council must adopt a resolution by before January 31, 2021, calling for a special election at the next regularly established election date not less than 114 days from the call of the election. That date is November 2, 2021.

The Madera County Election's Office has provided an estimated cost of \$15,000 to \$20,000 (subject to change) to hold the special election.

## **B. APPOINTMENT PROCESS**

If the Council chooses to fill the vacancy by appointment, the attached resolution provides an appointment process. The process requires posting of the vacancy with an invitation from residents of District 5 to submit an application. Applications for appointment will be considered at a regular or special meeting of the Council. Applicants will have an opportunity to address the Council and the public will have an opportunity to comment.

The resolution provides for a submission deadline which Council should consider. Sufficient time should be allowed for posting of the application process on the City website and publication in the newspaper. The Council can then consider the received applications at the January 20, 2021 Council regular meeting or at a special meeting.

The Council may choose an alternate submission deadline and schedule special meetings as needed to accommodate the appointment process and ensure appointment is made before January 31, 2021.

## **C. LEGAL REQUIREMENTS FOR FILLING VACANCY**

Government Code section 36512(b) addresses the options available to the Council to fill a vacancy on the City Council and reads:

If a vacancy occurs in an elective office, the Council shall, within 60 days of the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy.

### **1. Special Election**

Government Code section 36512(b) (1) reads:

If the Council calls a 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. A person elected to fill a vacancy holds office for the unexpired term of the former incumbent. *(emphasis added)*

SB 970 was recently enacted and is effective January 1, 2021. SB 970 has amended Election Code section 1000 to read as follows:

- (a) The first Tuesday after the first Monday in March of each even-numbered year that is evenly divisible by four. [next one is March 5, 2024]
- (b) The first Tuesday after the first Monday in March of each odd-numbered year. [next one is March 2, 2021]
- (c) The second Tuesday of April in each even-numbered year. [next one is April 12, 2022]
- (d) The first Tuesday after the first Monday in June in each even-numbered year that is not evenly divisible by four. [next one is June 7, 2022]
- (e) The first Tuesday after the first Monday in November of each year. [next one is November 2, 2021]

If the vacancy occurs on December 2, 2020, then 114 days from that date is March 26, 2021. However, in order to meet the language in Elections Code Section 36512 (b) (1) regarding “not less than 114 days after the vacancy date” means that a special election may not occur before the next regularly established election date of November 2, 2021.

## **2. Appointment**

There is no prescribed process in the Government Code regulating how an appointment to the Council is to be made. The process is a matter of Council discretion; however, should the Council elect to appointment a new member, it is Staff's recommendation that the Council utilize an appointment process as outlined in the resolution: posting of application process and considering selection at a noticed public meeting of the City Council.. Attached is a resolution setting forth such a process. Certain blanks will be filled in depending on when Council wishes to have this matter brought back to the Council.

If someone were appointed to the position, then that person would only hold office for the remainder of the current term for District 5.

In order to be eligible to be considered for appointment, any applicant must be a resident of District 5, a registered voter, and a United States citizen 18 years of age or older. (Government Code section 36502; Elections Code section 321)

Attached is a proposed resolution adopting an appointment process.

**FINANCIAL IMPACT:**

The County Elections Office has provided an estimated cost of \$15,000 to \$20,000 (subject to change) for holding the special election.

The cost to publish a public notice of the vacant position and receipt of applications will be minimal.

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN:**

**ALTERNATIVES:**

None. Action is required by law.

**ATTACHMENTS:**

Resolution Relating to Appointment Process

**RESOLUTION NO. 20- \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA ADOPTING A  
PROCESS FOR FILLING OF VACANCY ON THE CITY COUNCIL BY APPOINTMENT**

**WHEREAS**, Councilmember Garcia has been elected as Mayor for the City of Madera resulting in a vacancy for his position as councilmember of District 5; and

**WHEREAS**, under Elections Code 36512 the City Council must fill a vacancy on the City Council within sixty days from the commencement of the vacancy by election or by appointment; and

**WHEREAS**, the City Council has determined that it is in the best interest of the City to fill the vacancy by appointment.

**NOW, THEREFORE**, the City Council of the City of Madera hereby resolves as follows:

**SECTION 1.** The foregoing recitals are true and correct and incorporated by reference.

**SECTION 2.** The City Council hereby adopts a process for filling the vacancy on the City Council by appointment as follows:

**A. Invitation for Applications.**

The City Clerk shall post a notice of the vacancy and invite applications from Madera residents for appointment to the vacancy. The notice shall be posted at City Hall and on the City's website. The City Clerk shall employ the usual communication methods to alert City residents, interested groups, and individuals who have requested copies of City Council agendas. The notice shall be submitted to the newspaper of general circulation which prints the City's legal notices. The notice shall provide a deadline of \_\_\_\_\_ for submission of applications and provide that applications may be submitted electronically, in person, or by mail.

**B. Application Form.**

The City Clerk shall post an application form on the City's website and provide a copy of an application form to any person who requests an application. The City Clerk shall prepare an application form which shall include name, contact information (address, email, phone number), section for background information, and section for statement of reasons why he or she should be appointed. The application form must state that applicants must be at least 18 years old, a resident of District 5 in Madera, and a registered voter. The application must be signed and dated by the applicant.

**C. Consideration of Applications and Appointment.**

1. The Council shall consider the applications at a regular meeting or special meeting of the City Council to be held before January 31, 2021. Persons who have submitted an

application shall have an opportunity to address the Council and the Council may ask questions of the applicants.

2. The public shall have the opportunity to comment upon the candidates as a part of the agenda item.
3. No discussion of the candidates may be had in closed session.
4. An appointment will be approved by resolution and deemed to have been made upon a motion made and seconded and having received at least four (4) affirmative votes. Upon an appointment having been made, the successful candidate shall, at that meeting or at a subsequent regular City Council meeting, take the oath of office and be seated with the City Council. No appointment shall be deemed to have been completed and become effective until the appointee takes the oath of office.

### **SECTION 3. Powers and Duties of Appointed Person.**

The person appointed to the City Council shall serve the unexpired term for Councilmember Garcia. The appointed Councilmember shall have all of the rights, privileges, and duties of an elected Councilmember. The appointed Councilmember shall complete and file all conflict of interest disclosure forms as are required by law and shall be bound by and obey all other requirements pertaining to membership on the City Council.

### **SECTION 4. California Environmental Quality Act (CEQA) Finding.**

This resolution is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3), Review for Exemption, because it can be seen with certainty that the project will not have a significant effect on the environment; therefore, the project is not subject to CEQA.

### **SECTION 5. Implementation of Appointment Process.**

The City Manager, City Clerk, and City Attorney are authorized and directed to take such actions as may be necessary or convenient to give effect to the foregoing action.

### **SECTION 5. Effective Date.**

This resolution shall take effect upon adoption.