



DATE: November 1, 2022

TO: Mayor and City Council

FROM: City Manager
City Clerk
City Attorney

SUBJECT: Informational Report Describing the Appointment and/or Special Election Process for City Council Vacancy

RECOMMENDATION

That Council reviews the process for filling the anticipated unexpired term of Council Member Mark Salinas upon his election to Mayor on November 8 in advance of the decision-making process on Tuesday, December 13.

SUMMARY

The upcoming November General Municipal Election encompassed two races for vacancies for three positions on the Hayward City Council: Mayor and two (2) Council Members. Council Member Mark Salinas is currently running unopposed for Mayor. Council Member Salinas will take his seat as Mayor effective December 13, 2022, which will create a two-year vacancy on the Council. Section 501 of the City's Charter requires that the Council either fill the vacancy or proceed with a special election within 30 days following the occurrence of the vacancy. This report outlines the suggested process for appointing a Council Member to fill the anticipated vacancy resulting from Council Member Salinas becoming Mayor. The new Council would need to make a decision on December 13 regarding conducting an appointment process or calling for a special election.

BACKGROUND

The upcoming November General Municipal Election encompassed two races for vacancies for three positions on the Hayward City Council: Mayor and two (2) Council Members. Council Member Mark Salinas is currently running unopposed for Mayor. Council Member Salinas will take his seat as Mayor effective December 13, 2022, which will create a two-year vacancy on the Council, as Mr. Salinas' term as Council Member runs from November 2020 through the date the next Council is seated in early December 2024.

Section 501 of the Charter of the City of Hayward ("Vacancy in Elective Office") provides guidance when an elective office becomes vacant: *"A vacancy in an elective office shall be filled by appointment by the City Council, such appointee to hold office until the first Tuesday following the next General Municipal Election and until the officer's successor is elected and qualified. At the next General Municipal Election following any such appointment, the person so elected shall serve for the remainder of any unexpired term.*

No appointment to fill a vacancy in an elective office shall be made during such time prior to a General Municipal Election that nomination papers may be filed for candidates seeking office at said election.

In the event that Council shall fail to fill a vacancy by appointment within thirty days after such office shall have become vacant, it shall forthwith cause an election to be held to fill such vacancy (AMENDED: STATS. 1964 CH. 41; Amended on [November 3, 2020](#))"

Council last experienced the need to engage in a similar process in July 2014 upon the election of Council Member Barbara Halliday to the position of Mayor. Links to two reports from that process are below¹. Several Council Members requested that an informational report be prepared that outlines the process necessary to either appoint a Council Member to fill the unexpired term of Council Member Salinas or to hold a special election. Following the swearing in of the new Council on December 13, 2022, the new Council will need to act to either initiate an appointment process and/or consider a special election.

DISCUSSION

There are two possible sequential steps to filling the current vacancy on Council as directed by Section 501 of the Charter: first, for Council to go through an appointment process; and second, to call for a special election if the appointment process is unsuccessful or does not occur within 30 days following the vacancy. To protect the second possible step for Council, the appointment process must either be concluded or declared unsuccessful and a formal call by Council for a "Special Municipal Election" well ahead of early March 2023, which would be the filing date for candidates in the upcoming June Primary Election².

The timeline is very tight given the upcoming December holidays and City business closure.

Appointment Process and Timeline: The 2014 process included an application period for those interested in serving on Council; a process whereby Council determined who and how many applicants they wanted to consider; a public interview process; and a public action to appoint the selected candidate. The selected candidate was seated that same night. With this in mind, a calendar of the appointment process would look something like

¹ July 8, 2014 meeting: [CITY OF HAYWARD - Meeting of City Council on 7/8/2014 \(legistar.com\)](#) and July 22, 2014 meeting: [CITY OF HAYWARD - Meeting of City Council on 7/22/2014 \(legistar.com\)](#)

² NOTE: June is a Statewide Primary Election and is not a "General Municipal Election" as defined by the Charter because Hayward has determined to hold our "General Municipal Elections" in November of each applicable year; with the next one being in November of 2024.

the schedule outlined in Table 1, starting with the December 13 meeting installing the new Mayor and Council. The schedule is a mixture of regular and special meetings, with all being held on a Tuesday. The 2014 application for those interested in being considered for appointment to Council is attached as Attachment II for Council's reference. Possible steps in the appointment process based on the 2014 process are defined in Table 1 along with suggested timelines.

Table 1: Council Member Appointment Timeline (if special election option is not selected) DRAFT		
Nov 8	Tue	Municipal Election
Dec 13	Tue	Special Council Meeting: Certification of Election; seating of new Mayor and Two Council Members; election of Mayor Pro Tem; ceremonial matters; Council approves Council Member appointment process.
Dec 14	Wed	City Clerk issues a Notice of Vacancy and PIO prepares a press release. Council Member Applications available.
Dec 16	Fri	Notice of Vacancy is published in the Daily Review.
Dec 23 – Jan 2		Business/Holiday Closure
Jan 3	Tue	Council Member Applications due to the City Clerk by 9am.
Jan 3	Tue	Special Council Meeting: Staff report to Council regarding applicants and Council confirms interview process.
Jan 5	Thurs	Council Members individually select up to five applicants and notify their selections to the City Clerk by noon.
Jan 5	Thurs	City Clerk notifies selected applicants and creates interview schedule for following Tuesday.
January 10	Tue	Special Council Meeting: Council holds public interviews and appoints new Council Member to a two-year term; newly appointed Council Member takes the oath of office; OR Council directs City Clerk to prepare documents to call a Special Municipal Election to be consolidated with the June Primary Election.

Special Election: Should Council be unable to achieve a majority vote³ to appoint someone, the Charter requires that the matter go to election. In order for Council to accomplish that in a timely and fiscally responsible manner, Council would have to call for a Special Municipal Election to be consolidated with the upcoming June Primary Election. The Alameda County Registrar of Voters will not provide the official dates for the June Primary Election date until after the November 8 election. Staff will include these dates in the December 13 report on this topic. Generally, the City would need to call for the Special Municipal Election by mid-February 2023 in order to meet the public noticing requirements. Official filing for candidates also opens in mid-February 2023. These deadlines and the requirement that Council make a solid attempt to appoint a new member per the Charter before going to election puts pressure on the appointment timeline as captured in Table 1 above.

The City Clerk would not formally file the Call for Special Election with the County Registrar of Voters unless and until the appointment process fails within the 30-day period called for in the Charter or the Council chooses to proceed with the Special Election option.

Should Council not be successful in the appointment process and miss the deadline for consolidating with the June election, the option would remain to call for a Standalone Special Municipal Election, which would be at a time specified by Council after the June 2023 election. This would be very expensive and should be considered only as a last and remote possibility.

FISCAL AND ECONOMIC IMPACT

There is no economic impact of the appointment process. There is a potentially significant fiscal impact to the General Fund if Council defaults to the Special Municipal Election consolidated with the June election. Generally, a special election would cost between \$300,000-500,000. Staff will provide official estimates of these costs in the December 13 report.

STRATEGIC ROADMAP

This agenda item does not relate to any of the priorities in the Strategic Roadmap.

NEXT STEPS

As approved by Council on December 13, 2022, staff will implement and publicize the appointment process and timeline and/or take the steps necessary to proceed with the Special Municipal Election option.

Recommended by: Miriam Lens, City Clerk
Michael Lawson, City Attorney

³ A "majority vote" is four votes regardless of how many Council Members are in attendance at the meeting.

Kelly McAdoo, City Manager

Approved by:

A handwritten signature in black ink, appearing to read 'K. McAdoo', with a long horizontal flourish extending to the right.

Kelly McAdoo, City Manager