



**DATE:** April 11, 2023

**TO:** Mayor and City Council

**FROM:** City Manager  
City Clerk  
City Attorney

**SUBJECT:** Council Vacancy and Appointment: Adopt a Resolution Appointing a Candidate to Fill a Two-Year Term City Council Vacancy or Consider Alternative Options for Filling the Vacancy

## **RECOMMENDATION**

That the Council reviews the remaining candidates from the January interview process and adopts a resolution (Attachment II) appointing one of the three remaining candidates to fill the unexpired term of Council Member Elisa Márquez; or directs staff to pursue one of the alternative options outlined in this report, including calling for a Special Election if the appointment process is unsuccessful.

## **SUMMARY**

In February 2023, Alameda County Supervisor Richard Valle tragically passed away. Following his sudden passing, the County Board of Supervisors conducted a recruitment, interview, and selection process. Council Member Elisa Márquez submitted her application for the vacancy and on March 30, was selected to fill the vacant District Two Supervisor position until the next election. She was sworn in on April 4, 2023, leaving a vacancy in her City Council seat that the Council will need to fill within the next 30 days. Following the November 2022 General Municipal Election, the City conducted an extensive outreach and interview process to fill the vacant Council seat created when Mark Salinas was elected Mayor. The Council appointed Dan Goldstein to fill that vacancy. There are three remaining candidates that the Council interviewed in January 2023 that are still interested in the vacancy at this time. Staff recommends reconsidering these three candidates and selecting one to fill Council Member Elisa Márquez' vacant City Council seat. Alternatively, Council could direct staff to conduct a new outreach and recruitment effort to allow the Council to interview and appoint a candidate in the next 30 days or to call for a Special Election if the appointment process is unsuccessful.

## **BACKGROUND**

In February 2023, Alameda County Supervisor Richard Valle tragically passed away. Supervisor Valle served and represented District Two, which includes the City of Hayward. Following his sudden passing, the County Board of Supervisors conducted a recruitment, interview, and selection process. Council Member Elisa Márquez submitted her application for the vacancy and on March 30, was selected to fill the vacant District Two Supervisor position until the next election. She was sworn in on April 4, 2023, leaving a vacancy in her City Council seat that the Council will need to fill within the next 30 days.

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)”*

Following the November 2022 General Municipal Election, the City conducted an extensive outreach and interview process to fill the vacant Council seat created when Mark Salinas was elected Mayor. The Council appointed Dan Goldstein to fill that vacancy. Council Member Elisa Márquez was reelected to her current City Council seat in November 2020 and her term would have expired in November 2024. Her appointment to the County Board of Supervisors leaves a vacancy in this Council seat until the next General Municipal Election in November 2024. Per the provisions of the City Charter and given that Council Member Márquez was sworn in on April 4, 2023, the Council now has until May 4, 2023 to fill the vacancy or will be required to call for a special election.

## **DISCUSSION**

Given that the City Council just completed an extensive outreach and interview process to fill a vacant Council seat in January 2023, staff recommends appointing for the current vacancy from the remaining list of candidates. At the December 13, 2022 City Council meeting<sup>1</sup>, the Council approved a process for filling a two-year City Council vacancy created when Council Member Mark Salinas was elected Mayor and sworn into office on December 13, 2022. Following the Council meeting and as directed, City staff issued a news release

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<sup>1</sup> December 13, 2022 City Council Meeting – Council Vacancy Process [CITY OF HAYWARD - File #: LB 22-026 \(legistar.com\)](https://legistar.com)

about the Council vacancy and a Notice of Vacancy was published in the Daily Review c/o Bay Area News Group-East Bay on December 16, 2022.

At the January 3, 2023 City Council meeting<sup>2</sup>, the Council accepted applications from forty-five qualified candidates and approved the interview process to select a member of the City Council. On January 5, 2023, members of the City Council individually nominated up to five applicants and submitted their selections to the City Clerk. The City Clerk tallied choices and invited applicants who received five or more points to interview with the City Council on Monday, January 9, 2023. The Council interviewed the following individuals during the January 9 meeting: Dan Goldstein; Artavia Berry; Ray Bonilla; Austin Bruckner; and Aidan Ali-Sullivan. Dan Goldstein was appointed as a result of this process. Aidan Ali-Sullivan has since withdrawn his name from consideration in this current process.

Following the January selection process, the City Manager received feedback that the nomination and selection process was somewhat confusing. As such, staff is recommending an alternative selection process that mirrors the recent voting process the County Board of Supervisors used to fill the vacant District Two position. Staff recommends that the Council use this process or, alternatively, any member of the Council may make a nomination from those named and, if the nomination receives a second, then the full Council will vote on the nomination. This process would continue until a nominee receives four votes.

If the Council chooses to appoint from the remaining three candidates at this evening's meeting, the suggested voting process follows:

Round 1:

The Council will be presented with the names of all candidates who were interviewed for the position. Each Council Member will then vote orally by roll call vote for as many as two candidates. The City Clerk shall tally the votes and announce the results aloud. The two candidates who receive the greatest number of votes will be retained for consideration in the next round.

Round 2:

The Council will be presented with a list of the two candidates who received the greatest number of votes in Round 1. Each Council Member will then vote orally by roll call vote for one candidate and the City Clerk shall tally the votes and announce the results aloud. The candidate receiving the highest number of votes will be the selected candidate to fill the vacancy.

Following this voting process, the Council would then need to make a formal motion with a second to adopt a resolution (Attachment II) to officially appoint the selected candidate for the vacancy. The new member would be sworn in at the beginning of the meeting on Tuesday, April 18, 2023 and would begin his/her duties at that meeting.

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<sup>2</sup> January 3, 2023 City Council Meeting – Council Vacancy Update [CITY OF HAYWARD - File #: LB 23-001 \(legistar.com\)](https://legistar.com)

Alternatively, the Council could direct staff to conduct another recruitment process similar to the one conducted in December 2022/January 2023. Staff does not recommend this alternative given the extensive process that was recently conducted and the amount of staff effort needed to undertake it.

### Special Election:

If the Council does not wish to make an appointment or is unable to achieve a majority vote<sup>3</sup> 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 and order a Mail Ballot Election. The City would need to call for the Special Municipal Election well before June 2, 2023 in order to meet the deadline for an August 29, 2023 Mail Ballot Election. The nomination filing would start May 8, 2023 and end June 2, 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.

The City Clerk would not formally file the resolution calling for a Special Election with the Alameda County Registrar of Voters and Alameda County Board of Supervisors 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 to call for a Special Election (Mail Ballot Election), the option would remain to call for a Standalone Special Election, which would be at a time specified by Council after the August 29, 2023 Mail Ballot Election. This would be very expensive (\$19 - \$21 per registered voter) and should be considered only as a last and remote possibility.

### **FISCAL AND ECONOMIC IMPACT**

There is no economic impact associated with the appointment process. There is a potentially significant fiscal impact to the General Fund if Council defaults to the Special Municipal Election. Generally, a Standalone Vote by Mail Election would cost between \$9 - \$11 per registered voter and estimating 80,000 registered voters, the cost would be \$720,000-\$880,000.

### **STRATEGIC ROADMAP**

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

### **NEXT STEPS**

If Council votes to appoint a new member from the remaining three candidates and adopts the attached resolution, the new member would be sworn in at the beginning of the April

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

18, 2023 Council meeting and would begin service. If the Council chooses either alternative process (new full recruitment or special election), staff would take the steps necessary to proceed with these options.

Recommended by:

Kelly McAdoo, City Manager  
Miriam Lens, City Clerk  
Michael Lawson, City Attorney

Approved by:



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Kelly McAdoo, City Manager