



STAFF REPORT

Date: October 16, 2014
To: Mayor and Members of City Council
From: William R. Galstan, Special Counsel *William R. Galstan*
Cc: Bryan Montgomery, City Manager; Libby Vreonis, City Clerk
Subject: Ordinance Establishing Procedures for Council Vacancy Appointments

FOR CONSIDERATION AT THE CITY COUNCIL MEETING ON OCTOBER 28, 2014

Background

Vacancies on the City Council occur from time to time. When they do, questions often arise regarding the procedures to be used to fill the vacancy. In order to give the public confidence that the procedure is established and will be followed in each instance, and to streamline research conducted by staff, it is recommended that an ordinance be adopted spelling out the procedures.

State law, Government Code Sec. 36512, gives the Council the option of filling a vacancy by:

- a) Appointment; or
- b) The calling of a special election.

Given the costs of special elections, appointments are commonly made in other General Law cities. The attached proposed ordinance continues to provide Council with the option of calling a special election, but does spell out the procedures to be used when a vacancy is filled by appointment.

The ordinance has the following main points:

- The City Clerk, upon receiving a resignation or learning of the death of a Councilmember, posts notice of the vacancy and invites applications;
- The notice is posted, at a minimum, in the newspaper, on the Website, to all persons who have requested copies of meeting agendas, and on the next Consent Calendar;
- The notice provides 30 days (*but Council could opt for a shorter or longer period*) for the applications to be filed with the City Clerk;
- The application forms generally follow the format used for other committee and board appointments, calling for name, address, contact information, interest in the position, qualifications, etc.;



- All applications are posted on the next available Council agenda and the Council conducts public interviews. Per state law, there can be no closed session discussion regarding the candidates;
- If the Council wishes to appoint one of the applicants, it does so within 60 days of the effective date of the vacancy. State law provides this time period. For resignations, the effective date is the date specified in the resignation letter;
- If the Council does not wish to appoint any of the applicants, it would call an election;
- Per state law, the appointed member would serve the unexpired term of his/her predecessor and have the same rights and obligations as other members, including the opportunity to be appointed vice mayor and mayor per our rotation ordinance.

Options

1. Designate a shorter or longer time period for the filing of applications;
2. Determine not to adopt an ordinance but instead to generally follow the procedures outlined above.

Fiscal Impact

None. If the Council does appoint rather than call elections, significant savings to the General Fund would be realized.

Recommendation

Waive reading and introduce the ordinance by title only. Council may wish to amend certain portions of the ordinance, such as the time for submitting applications, or determine to do nothing and to generally follow the procedures outlined in the draft ordinance.

Attachments

- A. Draft ordinance adding Sec. 2.1.007 to the Oakley Municipal Code;
- B. Copy of a sample application form, which could be revised to fit the situation, used for committee and board appointments.

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OAKLEY ADDING
SECTION 2.1.007 TO CHAPTER 1 OF TITLE 2 OF THE OAKLEY MUNICIPAL
CODE, DEALING WITH APPOINTMENT PROCEDURES**

The City Council of the City of Oakley does ordain as follows:

Section 1. Section 2.1.007 is hereby added to the Oakley Municipal Code, to read as follows:

2.1.007 Appointment procedures for filling vacancy.

(a) Announcement of vacancy and invitation for applications.

Upon the City Clerk receiving a written resignation from a Councilmember, or upon the death of a Councilmember, or upon the determination by the City Council that a vacancy exists for some other reason, the Clerk shall post a notice of the vacancy and invite applications from Oakley residents for appointment to the vacancy. The notice shall be, at a minimum, delivered to the newspaper of general circulation which prints the city's legal notices, to the city's website, to all persons who have requested copies of City Council agendas, and to the Consent Calendar of the next City Council meeting. The notice shall provide a deadline, at least 30 calendar days from the date of posting of the notice, for submission of applications. The City Clerk shall provide an application form to any person qualified for appointment who requests an application. The application forms shall generally follow the content of application forms for appointment to other City committees or commissions, and specify the applicant's name, address, contact information, interest in the position, qualifications and other pertinent information. The application form shall state that any applications submitted are deemed to be public records and available for public inspection and copying. Nothing in this paragraph or section shall interfere with the right of the City Council to, instead of making an appointment, calling a special election for the purpose of filling the vacancy.

(b) Consideration of applications.

The City Clerk shall post all applications received on a public City Council meeting agenda for consideration by the City Council. At that time, or at such other time as the Council may determine, the Council shall conduct public interviews of the candidates at a regular City Council meeting. The public shall have the opportunity to comment upon the candidates as a part of the agenda item. No discussion of the candidates may be had in closed session. If the City Council determines to appoint a candidate to fill a vacancy, it shall do so within 60 calendar days of the effective date of the vacancy. In the case of a resignation, the effective date of the

resignation shall be the date specified in the resignation for its effectiveness to occur. It shall not be necessary for the City Council to accept a resignation. An appointment will be deemed to have been made upon a motion made and seconded and having received at least three 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.

c. Powers and duties.

Any person appointed to the City Council shall serve the unexpired term of the Councilmember who has been replaced. The appointed Councilmember shall have all of the rights, privileges and duties of an elected Councilmember, and shall be eligible for appointment to Vice Mayor and Mayor as provided in the rotation system for such appointment specified in this Chapter. The City Council may appoint the appointed Councilmember to the committee assignments held by his/her predecessor, or may determine to make other committee appointments, or no committee appointments. 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 2. California Environmental Quality Act (CEQA) Finding.

This ordinance 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 3. Severability.

In the event any section or portion of this ordinance shall be determined to be invalid or unconstitutional, such section or portions shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

Section 4. Effective Date and Publication.

This ordinance shall take effect and be in force thirty (30) days from and after the date of its passage. The City Clerk shall cause the ordinance to be published within fifteen (15) days after its passage in a newspaper of general circulation, or by publishing a summary of the proposed ordinance, posting a certified copy of the proposed ordinance in the City Clerk's Office at least five (5) days prior to the City Council meeting at which the ordinance is to be adopted, and within fifteen (15) days after its adoption, publishing a summary of the ordinance with the names of the Council Members voting for and against the ordinance.

The foregoing ordinance was adopted with the reading waived at a regular meeting of the Oakley City Council on _____, 2014 by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

APPROVED:

Randy Pope, Mayor

ATTEST:

Libby Vreonis, City Clerk

Date

**APPLICATION FOR APPOINTMENT
BY THE OAKLEY CITY COUNCIL
FOR
CITIZEN PLANNING ADVISORS*
(Please Print Clearly)**

Name: _____

Home Address: _____

Mailing Address:
(if different) _____

Home Phone: _____

Work Phone: _____

Fax: _____

E-Mail: _____

Please provide a written or typed response for each item below. Please use no more than 200 words per item. Please attach additional pages as needed.

- 1. Please state your interest in the position.**

2. Qualifications: Please describe your educational, work and other experience which would make you a valuable addition to the position.

3. Please describe the professional preparation or expertise that you bring to this position, if any.

4. What do you believe is the most important role of a Citizen Planning Advisor?

5. Having been a resident of Oakley, what do you see as the strengths of the community? Conversely, what are its weaknesses?

6. Are you currently serving on any board or commission for Oakley or any other governmental agency?

7. Have you previously served on any board or commission for Oakley or any other governmental agency?

8. Are you or have you been involved in any local, civic or community groups?

9. What are your principal areas of interest in our City government, and what expertise or special knowledge can you bring to those areas?

10. What do you hope to accomplish by your participation with the Citizen Planning Advisory group?

Additional relevant comments:

Date: _____

Please return this application no later than 6 p.m. on Thursday, April 17, 2014 to:

City of Oakley
Office of the City Clerk
3231 Main Street
Oakley, CA 94561

***All information contained in this application is public data and will be made available for public review and copying for anyone requesting it, and may be posted on the website of the City of Oakley. All information in this application will be provided to the Oakley City Council in a public forum and will be reviewed in public. It will therefore be part of the public record. Although you are not legally required to provide any of the information requested in this application, the information may be used to determine your suitability for appointment to the committee.**