



Agenda Report

Fullerton City Council

MEETING DATE: OCTOBER 16, 2018

TO: CITY COUNCIL / SUCCESSOR AGENCY

SUBMITTED BY: KENNETH A. DOMER, CITY MANAGER

PREPARED BY: LUCINDA WILLIAMS, CITY CLERK

SUBJECT: FULLERTON MUNICIPAL CODE AMENDMENT
REGARDING CITY COUNCIL VACANCIES

SUMMARY

In 2011, City Council adopted Ordinance No. 3166 to allow the City Council to fill a vacancy on the City Council by calling a special election, which may be consolidated with the next general municipal election, as well as make an interim appointment to serve on the City Council until the special election. The candidate elected at the special election would serve the remainder of the vacant term.

In 2015, the State amended Government Code Section 36512, adding subdivision (b)(1) and (b)(2), which codified the intent of Fullerton Ordinance No. 3166 as well as addressed appointments to vacancies occurring in the second half of the term of office. Staff requests that City Council consider repealing Ordinance No. 3166 and follow the regulations outlined in Government Code 36512 regarding appointments to City Council vacancies.

RECOMMENDATION

Introduce Ordinance No. XXXX by title only and waive further reading of the ordinance.

ORDINANCE NO. XXXX – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, REPEALING SECTION 2.02.020 OF CHAPTER 2.02 OF TITLE 2 OF THE FULLERTON MUNICIPAL CODE RELATING TO COUNCIL VACANCIES

PRIORITY POLICY STATEMENT

This item matches the following Priority Policy Statement/s:

- Fiscal and Organizational Stability.

FISCAL IMPACT

The estimated cost of a stand-alone special election ranges between \$391,523 and \$428,150. The estimated cost of the General Municipal Election ranges between \$87,301 and \$108,793. Approval of this item would allow the City to consolidate an election for a City Council vacancy with a general municipal election with only minimal increases to the cost of the general municipal election.

DISCUSSION

California Government Code Section 36512 states that City Council will fill a vacancy on the City Council by appointment or call for an election to fill the vacancy within sixty days from the commencement of the vacancy.

The Government Code also allows a city to adopt an ordinance to add certain additional requirements to the process to fill a City Council vacancy. In 2011, City Council adopted Ordinance No. 3166 to allow the City Council to fill a vacancy on the City Council by calling for a special election, which may be consolidated with the next general municipal election, as well as make an interim appointment to serve on the City Council until the special election. The candidate elected at the special election would serve the remainder of the vacant term.

This option allowed City Council to conduct business with five seated Council Members until the next regular election while also avoiding the cost of holding a stand-alone municipal election. The 2011 ordinance, as adopted, does not specifically address situations when the vacancy occurs in the second half of the term and the City would not have the option to consolidate the special election with the general municipal election. This could then require the City to hold a special stand-alone election for a vacant term with less than two years remaining before expiration of the term. The 2011 Agenda Report is attached to this report for reference.

The estimated cost of a stand-alone municipal election would total more than three times the estimated cost of a general municipal election. Staff also inquired about the cost of an all-mail ballot election, which the City might be able to hold if it meets specific criteria in Elections Code Section 4005, which would cost more than twice the cost of an election consolidated with the November general election. The following table compares the estimated costs provided by the Orange County Registrar of Voters for a consolidated election (November 2018), a stand-alone special election and a stand-alone all-mail ballot election:

Type of Election	Estimated Cost
Consolidated Election (November 2018)	\$87,301 - \$108,793
Stand Alone Election	\$391,532- \$428,150
All-Mail Ballot Election	\$224,055 - \$260,866

In 2015, the State amended Government Code Section 36512, adding subdivision (b)(1) and (b)(2) as follows:

36512.

(b) If a vacancy occurs in an elective office provided for in this chapter, the council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy.

(1) 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.

(2) If the council fills the vacancy by appointment, the person appointed to fill the vacancy shall hold office pursuant to one of the following:

(A) If the vacancy occurs in the first half of a term of office and at least 130 days prior to the next general municipal election, the person appointed to fill the vacancy shall hold office until the next general municipal election that is scheduled 130 or more days after the date the council is notified of the vacancy, and thereafter until the person who is elected at that election to fill the vacancy has been qualified. The person elected to fill the vacancy shall hold office for the unexpired balance of the term of office.

(B) If the vacancy occurs in the first half of a term of office, but less than 130 days prior to the next general municipal election, or if the vacancy occurs in the second half of a term of office, the person appointed to fill the vacancy shall hold office for the unexpired term of the former incumbent.

This amendment to the Government Code achieves the goal of City Ordinance No. 3166 to allow a temporary appointment in the case of a City Council vacancy until voters can decide on a candidate to fill the remainder of the term at the next general municipal election. In addition, Government Code Section 36512(b)(2) addresses situations when a vacancy occurs too late in the term to consolidate a special election with the general municipal election, which was not addressed in Ordinance No. 3166. Government Code Section 36512 continues to allow City Council the option to call a special election to fill an unexpected vacancy on the City Council provided that City Council holds the election not less than 114 days from the call of the special election.

As such, Staff recommends repealing Ordinance No. 3166 and, in its place, following the regulations in Government Code Section 36512 regarding filling City Council vacancies. This action would continue to meet the intent of Ordinance No. 3166, bring the City into conformance with more recent state legislation and allows greater flexibility to account for timing and financial considerations when filling a vacancy on the City Council.

Attachments:

- Attachment 1 - Draft Ordinance No. XXXX
- Attachment 2 - January 18, 2011 Agenda Report
- Attachment 3 - Government Code Section 36512