




CITY COUNCIL AGENDA

MEETING DATE: JANUARY 18, 2011 101-01
TO: CITY COUNCIL/CITY MANAGER R=1/13
FROM: OFFICE OF THE CITY CLERK P=1/13
SUBJECT: ADOPT ORDINANCE NO. 3166 – AMENDING THE MUNICIPAL
CODE CODE TO PERMIT COUNCIL TO TEMPORARILY FILL COUNCIL
VACANCY UNTIL NEXT ELECTION

Approved for Agenda:



City Manager's Office

SUMMARY

Ordinance No. 3166 amends the City of Fullerton Municipal Code to permit the Council to temporarily fill vacancies on the Council until the date of the next regularly scheduled municipal election.

RECOMMENDATION

Adopt Ordinance No. 3166:

ORDINANCE NO. 3166 – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, ADDING SECTION 2.02.020 TO THE FULLERTON MUNICIPAL CODE RELATING TO THE FILLING OF CITY COUNCIL VACANCIES

PROPOSED COSTS

No impact. Assuming the City Council holds the election at the next regularly scheduled municipal election, the cost will be the same irrespective of the number of Council seats or local measures to be voted on.

DISCUSSION

At the January 4, 2011 meeting, the City Council approved to have first reading by title only, introduction, and waived further reading of Ordinance No. 3166 amending the City

of Fullerton Municipal Code to permit the Council to temporarily fill vacancies on the Council until the date of the next regularly scheduled municipal election.


Robert Ferrier, Interim City Clerk

Attachment

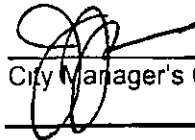


CITY COUNCIL AGENDA

MEETING DATE: JANUARY 4, 2011
TO: CITY COUNCIL/CITY MANAGER
FROM: CITY ATTORNEY'S OFFICE
SUBJECT: AMENDING MUNICIPAL CODE TO PERMIT COUNCIL TO TEMPORARILY FILL COUNCIL VACANCY UNTIL NEXT ELECTION

101-01
R=1/13
P=1/13

Approved for Agenda



City Manager's Office

SUMMARY

Consideration of an Ordinance amending the City of Fullerton Municipal Code to permit the Council to temporarily fill vacancies on the Council until the date of the next regularly scheduled municipal election.

RECOMMENDATION

Have first reading by title only, introduce, and waive further reading of Ordinance No 3166, to permit the Council to temporarily fill vacancies on the Council until the date of the next regularly scheduled municipal election.

PROPOSED COSTS

No impact Assuming the City Council holds the election at the next regularly scheduled municipal election, the cost will be the same irrespective of the number of Council seats or local measures to be voted on.

DISCUSSION

Current Procedure for Filling Council Vacancy

The process currently followed for filling Council vacancies is set forth in Section 36512 of the Government Code Subsection (b) of that Section provides that the vacancy may be filled by either Council appointment or by calling for a special election:

“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. 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 appointed or elected to fill a vacancy holds office for the unexpired term of the former incumbent.”

As a result, the Council currently has 60 days¹ from the commencement of the vacancy to decide whether to fill the vacancy by appointment or by calling a special election. If the Council chooses to call an election, that election must be held on the next regularly-established election date that is not less than 114 days from the date the Council called for the election. Whichever method is used, the statute provides that the person appointed or elected will serve out the remaining *balance of the incumbent* Councilmember’s term of office. Subsection (b) does not allow for a lesser term of appointment.

Optional Procedures for Filling Vacancies

Notwithstanding the above, state law permits cities to adopt a local ordinance providing an *alternative method* for filling vacancies on the City Council. Specifically, Government Code Section 36512(c)(3) states that the City Council may adopt an ordinance that provides that a person appointed to fill a vacancy on the City Council will only hold office until the date of a special election, which must be immediately called to fill the remainder of the incumbent Councilmember’s term. It goes on to state that such election may be held either on the date of the next regularly established election or on the date of the next regularly scheduled municipal election to be held throughout the city not less than 114 days from the call of the special election.

Pursuant to Council direction, the City Attorney’s office prepared an ordinance implementing the provisions of Government Code 36512(c)(3). The proposed ordinance adds a new section 2.02.020 to the Fullerton Municipal Code (FMC). If adopted the ordinance would permit the City Council to temporarily fill vacancies on the Council, and the appointee would hold the office only until the date of a special election. The special election would need to be called immediately, and would be held on the date of the next regularly scheduled municipal election, which, according to the City’s Municipal Code, must be held and consolidated with the statewide general election. FMC § 2.02.010. Under state law the election would also have to be held at least 114 days from the date that it is called by the Council.

For example, assume a vacancy occurs on the Council where the remaining term in office is 3 ½ years, and the next regularly established municipal election date is 18 months away (i.e., more than 114 days). In this situation the Council could fill the vacancy by appointment, and also immediately call a special election to be held 18 months later. The person appointed to serve temporarily would only serve in office until

¹ The number previously was 30 days, but was increased to 60 days effective January 1, 2011.

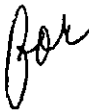
the election results were final (18 months), and the person elected at the special election would then serve the remaining two years

Note, the proposed ordinance does not contain a mandatory requirement that the Council fill a vacancy by appointment. The Council continues to retain the option, under Government Code section 36512(b), of just leaving the vacancy open and calling for a special election for the next regularly scheduled election date (not less than 114 days after the election is called). If this option is invoked, the person who is ultimately elected will serve the entire remaining term of the departing councilmember.

In sum, the proposed ordinance gives the Council the ability to temporarily fill a vacancy until a regularly established municipal election is held. At that time, the voters would elect a person to serve out the balance of the incumbent's term of office. The proposed structure gives the Council freedom to fill a vacant office, but also provides opportunity for the voters to fill the seat at the first reasonable opportunity. Should it choose to do so, the Council also retains the option of just leaving the vacancy open and calling for a special election at the next regularly scheduled election date to fill the remaining term of office.



Christian Bettenhausen
Deputy City Attorney



ORDINANCE NO 3166

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, ADDING SECTION 2 02.020 TO THE FULLERTON MUNICIPAL CODE RELATING TO THE FILLING OF CITY COUNCIL VACANCIES

WHEREAS, Subsection (b) of Section 36512 of the California Government Code provides that when a vacancy occurs on a city council, the city council may, within 60 days of the occurrence of such vacancy, fill the vacancy by appointment or by calling a special election, and,

WHEREAS, Subsection (b) of Section 36512 provides that the person appointed to fill the vacancy will hold office for the unexpired term of the former incumbent, and,

WHEREAS, Subsection (c)(3) of Section 36512 provides that, notwithstanding Subsection (b) of Section 36512 of the Government Code, a city may enact an ordinance that provides that a person appointed to fill a vacancy on the city council will hold office only until the date of a special election, which will be called to fill the remainder of the term, and,

WHEREAS, Subsection (c)(3) of Section 36512 provides that such election may be held on the date of the next regularly established election or regularly scheduled municipal election to be held throughout the city not less than 114 days from the call of such special election, and,

WHEREAS, by limiting the term of a council appointee, the voters will have the opportunity to fill the balance of the vacancy by election while maintaining the City Council's discretion to temporarily fill the vacancy until such election may be held.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FULLERTON DOES ORDAIN AS FOLLOWS

SECTION 1 Recitals incorporated The recitals set forth above are hereby incorporated by reference into this ordinance and made a part hereof

SECTION 2 Section 2 02 020 Added Section 2 02 020 is added to the Fullerton Municipal Code to read in full as follows:

"Section 2 02 020 Council vacancies.

A If a vacancy occurs on the City Council, the City Council will, within sixty days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy as provided by subsection (b) of Government Code Section 36512.

B If the City Council elects to fill the vacancy by appointment, the person appointed will hold office only until the date of a special election, which will immediately be called to fill the remainder of the term as permitted under subsection (c)(3) of Government Code Section 36512. The special election may be held on the date of the next regularly scheduled municipal election to be held throughout the City not less than 114 days from the call of the special election, as provided by subsection (c)(3) of Government Code Section 36512."

SECTION 3 Severability If any section, subsection, phrase, or clause of this ordinance is for any reason held to be unconstitutional, such decision will not affect the validity of the remaining portions of this ordinance

The City Council hereby declares that it would have passed this ordinance and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional

SECTION 4. Effective Date This ordinance will take effect 30 days after passage thereof

SECTION 5 Publication This ordinance shall be published in accordance with the provisions of Government Code Section 36933.

ADOPTED BY THE FULLERTON CITY COUNCIL ON _____, 2011

F. Richard Jones, M D , Mayor

Robert Ferner, Interim City Clerk