



# ***Agenda Report***

## ***Fullerton City Council***

**MEETING DATE:** JANUARY 15, 2018

**TO:** CITY COUNCIL / SUCCESSOR AGENCY

**SUBMITTED BY:** KENNETH A. DOMER, CITY MANAGER

**PREPARED BY:** LUCINDA WILLIAMS, CITY CLERK

**SUBJECT:** OPTIONS FOR FILLING CITY COUNCIL VACANCY

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### **SUMMARY**

On December 4, 2018, Council Member Silva was sworn in as the District 3 City Council Member. This created a mid-term vacancy in Council Member Silva's prior at-large City Council seat which expires in December 2020 and requires the City Council to consider the legally available alternatives for filling the vacancy. City Council began discussions regarding filling the vacancy at the December 18, 2018 City Council meeting and continued deliberations to the January 15, 2019 meeting.

### **RECOMMENDATION**

Staff recommends City Council select one of the following options:

1. Appoint a qualified individual to fill the vacancy through the remainder of the term, either through direct appointment or following a process for applications and / or interviews and / or other steps as determined by City Council.

Or

2. Adopt resolutions calling special municipal election on November 5, 2019.

RESOLUTION NO. 2019-XX - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FULLERTON CALIFORNIA, CALLING FOR THE HOLDING OF A SPECIAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2019, FOR THE ELECTION OF CERTAIN OFFICERS AS REQUIRED BY THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA RELATING TO GENERAL LAW CITIES

RESOLUTION NO. 2019-XX - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, ADOPTING REGULATIONS FOR CANDIDATES FOR ELECTIVE OFFICE PERTAINING TO CANDIDATE

STATEMENTS SUBMITTED TO THE VOTERS AT A SPECIAL ELECTION  
TUESDAY, NOVEMBER 5, 2019

RESOLUTION NO. 2019-XX - A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF FULLERTON, CALIFORNIA, REQUESTING THE REGISTRAR OF  
VOTERS OF THE COUNTY OF ORANGE TO CONDUCT A SPECIAL MUNICIPAL  
ELECTION ON NOVEMBER 5, 2019 ON BEHALF OF THE CITY OF FULLERTON,  
CALIFORNIA

#### PRIORITY POLICY STATEMENT

This item matches the following Priority Policy Statement/s:

- Fiscal and Organizational Stability.

#### FISCAL IMPACT

If City Council opts to fill the appointment by special election, the estimated cost of a stand-alone election is \$391,532 - \$428,150. Funding will be budgeted with the Fiscal Year 2019-20 operating budget.

#### DISCUSSION

In the November 2018 General Municipal Election, Council Member Silva won the election for the Member of the City Council – District 3 seat for a four year term expiring December 2022. This required Council Member Silva to resign mid-term from his at-large City Council seat which expires December 2020 and created a vacant seat on the City Council. The vacancy became effective with Council Member Silva's oath of office for the District 3 seat on December 4, 2018.

Government Code Section 36512(b) states that City Council must fill the vacancy by appointment or call a special election to fill the vacancy within 60 days from the commencement of the vacancy. In this case, City Council should make its determination regarding filling the City Council vacancy no later than February 2, 2019.

Whether filled by appointment or special election, the person selected to fill the vacancy will hold office for the remainder of Council Member Silva's at-large term which expires December 2020 (Government Code Section 36512(b)(1), (b)(2)(B)).

#### Option – Fill Vacancy By Appointment

City Council may decide to fill the vacancy by appointment. The person appointed must be a registered Fullerton voter at the time of appointment. City Council may choose to make a direct appointment or establish a process to solicit input from those interested in filling the vacant seat which could include an application, nominations and / or interview process.

There is no legal requirement to create a process to solicit interested persons for the appointment. Should City Council wish to utilize some type of application process, Council would need to make the appointment at a special City Council meeting no later than February 2, 2019.

Staff has provided a draft Application for Appointment to the City Council for consideration. Should City Council wish to utilize an application process, Staff suggests the following timeline to ensure City Council makes the appointment within legal deadlines:

- January 16, 2019 – Applications available
- January 23, 2019 – Application deadline (5:00 p.m.)
- January 24, 2019 – January 29, 2019 Special Meeting Agenda posted
- January 28, 2019 – Optional “Applicants Forum”
- January 29, 2019 – Special City Council meeting to make appointment

As stated above, Staff has provided a sample Application for Appointment if this option is chosen. In order to provide as much information as possible for both the City Council and the general public, several questions are proposed in the application to include: Background and Qualifications, Community Involvement and then the following three questions: What important skills and qualification would you offer as a member of the City Council?; What are the most important issues facing the City today?; and Do you have any current obligations or responsibilities that could be construed as a conflict of interest? If so, please describe. Additionally, since residents seeking City Council election typically submit a candidate statement, applicants would be asked to provide a statement, not to exceed 400 words, stating their qualifications and why they are the best applicant to appoint to the vacant seat. Finally, since public officials are required to fill out a conflict of interest form (Form 700), each applicant would be asked to submit a completed Form 700 as part of their submission. All of these questions or documents are to assist both the City Council and the general public learn as much as possible about a potential appointee given the short time frame. These questions and documents are suggestions and the final application for appointment will be based on City Council direction.

#### Option – Call Special Election

City Council may choose to call a special election to fill the vacant City Council seat by adopting a resolution calling the special election (Elections Code Section 12001) within 60 days of the vacancy. Government Code Section 36512(b)(1) states “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 recent amendment to State Government Code sets forth those dates that are deemed a “regularly established election date” and the next such date is Tuesday, November 5, 2019. All candidates must be registered Fullerton voters at the time they pull nomination papers to run in the special election. The estimated cost of a stand-alone election is \$391,532- \$428,150.

Mail Ballot Election (Fullerton is not eligible to hold such an election)

Contrary to information contained in the December 18, 2018 Agenda Report, the City is not eligible to hold an all-mail ballot election. In putting together the options as presented during the December 18, 2018 Council Meeting, Staff reviewed the Elections Code and communicated with the Orange County Registrar of Voters. Unfortunately,

recent amendments to the Elections Code which specifically calls out Orange County as eligible to hold all-mail ballot elections is actually not effective since the Orange County Board of Supervisors did not adopt the Voter's Choice Act which, among other reforms, sets forth the ability for the County to hold all-mail ballot elections.

Elections Code sections 4000 and 4004 set forth when a city may conduct an election wholly by mail. However, the City does not qualify to conduct a mail ballot election pursuant to any of the subsections of Election Code Section 4000. The City also does not qualify to conduct a mail ballot election under Election Code section 4004 because it only authorizes a city with a population of 100,000 or less to conduct an all-mail ballot election.

Because the City does not have independent authority to conduct an all-mail ballot election and the County did not adopt the Voter's Choice Act, any special election to fill the City Council vacancy is required to be a stand-alone election. Unfortunately, due in part to the complicated nature of the Elections Code, this information was not fully understood until further discussions with the Registrar of Voters, the City Attorney's Office and discussions with the City of Orange which has a current vacancy on their City Council and is faced with the similar decision.

#### Funding Options for Election

The cost for an election, if chosen, will need to be budgeted during Fiscal Year 2019-20. The higher estimate will be budgeted per standard budgetary practice, with any excess remaining as fund balance at the end of the Fiscal Year. Per the City's Comprehensive Annual Financial Report (CAFR) for the Year Ending June 30, 2018, the City had an assigned fund balance of \$8,992,321 which is considered our 10% General Fund Reserve and an unassigned fund balance of \$4,999,471. The unassigned fund balance increased by \$3,477,048 from the previous fiscal year primarily due to the one time sale of city-owned property of \$3,150,000 along with the cumulative net changes in revenues and expenditures. The City Council, through previous actions, has already transferred \$3,000,000 from the unassigned fund balance for Street / Road repairs in the current Fiscal Year. Accordingly, the remaining unassigned fund balance of less than \$2,000,000 is recommended to be maintained in order to build up the General Fund Reserve from its current 10% level to reach the desired 17% level of our General Fund expenditures.

The Fiscal Year 2018-19 Budget was approved as balanced with projected General Fund revenues and expenditures of approximately \$93.1 million. Accordingly, the 10% General Fund Reserve Balance for 2018-19 will be \$9.31 million. Per the five year projections completed for the 2018-19 Budget, the projected Fiscal Year 2019-20 General Fund expenditures are \$96.8 million under an optimistic scenario, equaling revenues. Under a different scenario reflecting the beginnings of a mild economic downturn, the revenues are \$1 million less than expenditures, therefore cutting into the City's reserve levels if they remain at 10%.

As with past budgets for the City, the needs of various departments far outweigh the revenue available, to include the need for additional staffing in the Police Department and other internal service departments. Accordingly, the impact of expending \$428,150 for a special election will vary, but ultimately will mean other priorities will be deferred,

unmet or if the expected recession is greater than anticipated, a program or project may be cut.

While the Fiscal Year 2019-20 Budget preparation is only beginning, there are many unfunded projects / positions already known. For example, within the Community Development Department, there are many unfunded projects and identified needs related to specific plan development, technology upgrades, matching fund needs for projects and other projects which would lead to community improvements or customer service improvements. An example of these are:

<b>Unfunded Projects/Needs List</b>	<b>Approx. Cost</b>
1. Walnut/Truslow Specific Plan / Master Plan	\$175K
2. Fullerton Transportation Center /Downtown Specific Plan Update	\$300K
3. Phase II Energov Implementation <ul style="list-style-type: none"><li>- Mobile Tech</li><li>- Electronic Plan Review</li><li>- On-Line Permitting</li></ul>	\$115K
4. Economic Development Plan	\$150K
5. Harbor / Orangethorpe Gateway Area Specific Plan	\$250K
6. Fox Block Parking Structure Funding Gap	\$500K
7. Airport Master Plan Update	\$75K
8. Downtown Business Programs (BID, etc.)	\$50K
9. 2 <sup>nd</sup> Floor Customer Lobby Remodel	\$75K
10. Malvern Bike Connection Plan – Matching Funds	\$400K
11. Fullerton Bike Connections at Nutwood and Yorba Linda – Matching Funds	\$400K
12. Real Estate, Economic and Financial Consulting Services	\$200K

Within the Police Department, the Chief has identified the potential to increase community and preventative efforts, as well as the need to increase the budgeted number of police officer positions. Costs for doing such range from an annual cost of approximately \$85,000 per each Community Liaison Officer or Community Services Officer, up to approximately \$185,000 annual per police officer. To expand the Homeless Liaison Officer program from 2 to 4, the annual cost would be approximately \$437,000. Within the Fire Department, there are varying needs for additional vehicle replacements beyond our normal replacement ability, replacement personal protective equipment and station improvements which either remain unfunded or deferred due to higher prioritization of other needs.

For Public Works, the City is soon to complete a facilities master plan which identifies the maintenance needs of high profile City assets to include City Hall, the Police Department, all fire stations, larger community buildings and several other City-owned facilities. Based on the outcome of this study, it is unknown as to the costs for any high priority improvement or maintenance needs and no funding source, other than the

General Fund, is available for larger identified needs resulting from this assessment. Of course, the largest and most pressing need within Public Works is additional General Fund contributions for road improvements as the City has a backlog of improvement projects totaling over \$100 million dollars.

With regard to the City's efforts to address homelessness, while the City will be in receipt of dedicated funding from Senate Bill 2 (fees derived from property transactions) that can be used for affordable housing and homeless services, the costs related to homeless activities, specifically to provide adequate accommodations in light of federal court cases, continues to increase. One option the City is currently assessing is working with a local non-profit that has seven bed spaces available but which are currently under contract to the City of Anaheim. When that contract expires, it would serve the City's efforts well to contract for those bed spaces which have the potential to remove up to 120 individuals from the street annually, but at a cost of approximately \$300,000 a year.

As part of the consideration of the Fiscal Year 2019-20 Budget, the above examples as well as other Capital Improvement Programs will need to be considered in light of appropriating the \$428,150 for election costs.

Attachments:

- Attachment 1 – Ordinance No. 3268
- Attachment 2 – Government Code Section 36512
- Attachment 3 – Email Correspondence from OC Registrar of Voters
- Attachment 4 – Sample Applicant Questionnaire
- Attachment 5 – Draft Resolution No. 2019-XX (call election)
- Attachment 6 – Draft Resolution No. 2019-XX (candidate statements)
- Attachment 7 – Draft Resolution No. 2019-XX (request election services)