

STAFF REPORT

DATE: July 19, 2022

TO: City Council

FROM: Mike Webb, City Manager
Kelly Stachowicz, Assistant City Manager
Zoe Mirabile, City Clerk

SUBJECT: City Council Vacancy in District-Based Elections

Recommendation

This report is informational. Staff will return in the late fall regarding any issues or questions Council raises that may necessitate research or legal analysis.

Fiscal Impact

The cost of goods and services to hold an election are calculated by the Yolo County Elections Office based on the number of registered voters, offices and measures on the ballot, and participating jurisdictions. Staff anticipates the cost of an election would be approximately \$80,000-\$130,000. Funds would need to come from General Fund fund balance.

An appointment process would entail primarily staff resources, but could also include miscellaneous publishing costs. Funding for administration of an appointment process would come from General Fund and is anticipated to be available in the current budget.

Council Goal(s)

Ensure a Safe, Healthy, Equitable Community
Foster Excellence in City Services

Commission Input

City Council has direct purview over Council vacancies.

Background and Analysis

On June 7, 2022, Yolo County held an election for Yolo County Supervisor District 2. Current Davis Mayor Lucas Frerichs ran for the office and was elected by a majority of voters. He will be sworn in as Yolo County District 2 Supervisor on January 2, 2023. This will create a vacancy on City Council for the remainder of his term as Davis Councilmember for District 3 (term ends 2024).

Council vacancies are governed by California Government and Election Codes and the Davis Municipal Code. This staff report provides information and options for City Council to consider related to the filing of a vacancy.

Options for Filling a Council Vacancy

Within 60 days from the commencement of the vacancy, City Council may either:

1. Call a special election to fill the vacancy.

The election must be held at the next regularly established election date at least 114 days after calling the election. With an anticipated January 2 vacancy, the soonest available election date is either November 7, 2023 (regular election) or May 2, 2023 (all-mail ballot). There is currently no vacancy, therefore, Council may not call a November 2022 election. Even if there is a vacancy today, it would already be too late to call an election for November for that vacancy.

Established election dates (Election Code 1000):

First Tuesday after first Monday.

- Even years: March of years divisible by four, April, June of years not divisible by four, November
- Odd years: March, November

Established traditional election dates for 2023: March 7, 2023 and November 7, 2023

As an alternative to calling a “traditional” election which includes vote centers and in person voting options, Council may call an all-mail ballot election. An all-mail ballot election must also be held at the next regularly established all mail ballot election date at least 114 days after calling the election.

Election Code 4004 allows small cities with less than 100,000 residents to use all mail ballot voting in a special election to fill a Council vacancy if:

1. City Council passes a resolution allowing mailed ballots for the election
2. The election is not held on the same date as any statewide primary or general election
3. The election is not consolidated with any other election (which means no other jurisdiction in Yolo County has anything on the ballot)
4. The return of mailed ballots is conducted pursuant to Elections Code section 3017.

Established all mail ballot election dates (Election Code 1500):

- First Tuesday after first Monday in May
- Last Tuesday in August

Established all mail ballot election dates for 2023: May 2, 2023 and August 29, 2023

Duration

The individual elected to fill the vacancy will serve the remainder of the unexpired term.

2. Appoint a member to fill the vacancy.

Process

The appointment process is not proscribed by California Government Code or the Davis Municipal Code. Therefore, the process is a matter of Council discretion. However, the Council must complete the process to appoint a member within 60 days of the vacancy. If the vacancy occurs on January 2, then a new member must be appointed no later than March 3, 2023.

As an example, the City of Davis had a mid-term Council vacancy in 2011 when Don Saylor was elected to the Board of Supervisors. That vacancy was filled by an appointment process that included:

- Application Period (completed applications included a candidate statement of up to 1,500 words and a Form 700)

The qualifications to run for City Council still apply in an appointment process:

1. Resident of district (and must remain a resident of the district for the entire term)
 2. 18 years of age or older
 3. Registered voter (in district)
 4. United States citizen
- Public Outreach Period
 - Davis Media Access recordings of candidate statements
 - Applicant information posted to website
 - League of Women Voters Forum (community groups submitted questions ahead of time, general public submitted questions during forum)
 - Online Survey/Public Input Form
 - City Council Special Meeting
 - Questions to candidates
 - Narrowing of field with 5 rounds of votes via grid system, then final motion to appoint

Duration

- If vacancy occurs during the first half of the term:

- *And at least 130 days prior to the next general municipal election:* Until the next general municipal. Then, the elected member to fill the vacancy will hold office for the remainder of the unexpired term.
- *Less than 130 days prior to the next general municipal election:* Remainder of the unexpired term.
- If vacancy occurs during the second half of the term (***This is the current scenario.***):
 - *Remainder* of the unexpired term.

OR

As an alternative, Council may appoint someone to fill the term only until an election is held (authorized via Davis Municipal Code 2.01.120(b)).

Timeline for Anticipated Vacancy

- January 2, 2023: Vacancy occurs. First day possible to call election.
Please note: January 2, 2023 is a city observed holiday closure.
- January 8, 2023: Last day possible to call May all-mail ballot election
- March 3, 2023: Last day possible to call election or to complete an appointment process
- May 2, 2023:** Next All Mail Ballot Election Date if call election by January 8, 2023
- August 29, 2023:** Next All Mail Ballot Election Date if call election by March 3, 2023
- November 7, 2023:** Next “traditional” election date if call election January 2, 2023 or June 25, 2023. This date is not available as an all-mail ballot election.

Next Steps

Staff recommends City Council consider the options presented in this staff report and advise staff and the city attorney of any concerns or questions, including any questions that may necessitate research or legal analysis. Further, due to the upcoming November election for City Council Districts 1 and 4, staff recommends City Council delay substantive direction to staff until after the election and swearing in of councilmembers in December.