



AGENCY: City Council
MEETING DATE: November 23, 2020
DEPARTMENT: City Manager
PRESENTED BY: Tabatha Miller
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AGENDA ITEM SUMMARY

TITLE:

Receive Report and Provide Direction to Staff Regarding the Procedure for Filling the Upcoming Vacancy on the Fort Bragg City Council

ISSUE:

On October 26, 2020, Mayor William V. Lee, who has served on the Fort Bragg City Council since winning a seat in November 2016, announced his resignation effective December 31, 2020. Mayor Lee was appointed to a second four-year term on August 13, 2020, after it was confirmed that Mayor Lee and Vice Mayor Norvell were the only two qualified City Council candidates to be on the November 3, 2020 ballot for the two open Council seats.

The City Council will have 60 days from the date of current Mayor William V. Lee's vacancy to either 1) appoint someone to serve the first two years of the remainder of the new four-year term, with an election in November 2022 to determine who will complete the remaining two years of the term, or 2) call a special election to elect someone to fill the vacancy through the end of William V. Lee's term in November 2024.

ANALYSIS:

[California Government Code Section 36512](#) provides that within 60 days of the vacancy, the City Council must either appoint a replacement Councilmember or call a special election to elect a replacement. Providing that the effective date of Lee's resignation is December 31, 2020, the City Council must take one action or the other on or before March 1, 2021.

Appointment

If the Council fills the vacancy by appointment, the replacement will serve until the next regular municipal election on November 1, 2022. In November 2022, the three regular City Council seats would be up for election for four-year terms and the seat vacated by Lee's resignation will be elected for a two-year term. Assuming that all elected Councilmembers serve full terms, in November 2024 two seats will be up for election and in November 2026 three seats will be up for election. The cost of an additional or special election would be avoided if the vacant seat is appointed, since the November 2022 election is a regular municipal election and not a special election. The election in November 2018 was approximately \$10,500 with approximately 3,000 voters participating. Currently, there are 3,938 registered voters in Fort Bragg and the estimated cost of an election would be \$15,000 or about one third more.

If the City Council decides to appoint, it will determine the process for appointing a replacement to serve until after the November 2022 election, when the newly elected 2-year term Councilmember is sworn in. Staff anticipates that the Council will follow a process similar to appointment of Noyo Harbor Commissioners. Qualified applicants, those residing

in the City limits who are at least 18 years old and registered to vote in the City, who are interested in the appointment would complete an application and City Council would invite candidates to be interviewed for the position. Candidate interviews with the full Council must be conducted in public to avoid Brown Act violations. A transparent process also provides the public the opportunity to participate and voice their thoughts, opinions, support or concerns. The Council would follow the process of making a motion to appoint an individual, followed by a second and a roll call vote. A majority or three of the four remaining Councilmembers would be needed for an appointment. The City Council may consider and adopt modifications to this proposed appointment process.

Appointing a new City Councilmember to serve until November 2022 is an opportunity to recruit a member that may not be willing to participate in a traditional election campaign. Campaigning is a very time consuming and exhaustive process. Some years it can be more contentious and divisive than others. The reward or the price at the end of the campaign, is that voters weigh in and send a message of support or rejection of a candidate. There are qualified residents of the City that may be more than willing to serve as an appointee but do not want to participate in the campaign process.

Appointment may also provide a potential candidate who may not have exposure or name recognition the break to prove his or her leadership qualities during the just under two-year appointment period. This experience could lead to an election of a nontraditional or lesser known candidate in November 2022. Appointing a replacement may provide an opportunity to add more diversity or inclusion of nontraditional candidates to the makeup of the City Council.

Call Special Election for November 2, 2021

A vacancy filled by special election would take place at the “next regularly established election date not less than 114 days from the call of the special election.”¹ There are only two regular election dates in 2021: March 2 and November 2. The deadline for the March 2, 2021 election was November 8, 2020, which was prior to the vacancy and prior to Councilmembers Lee and Norvell taking office for their second terms which is expected to start upon swearing in on December 14, 2020. Therefore, if the Council decides to call a special election, it would be held on November 2, 2021. The cost of this special election is estimated to be approximately \$15,000.

The candidate elected to fill the vacancy in this special election would serve the remaining unexpired term of the former incumbent (William V. Lee) until after the November 2024 election, when the newly elected Councilmembers are sworn in. The vacant seat would remain open from December 31, 2020 until after the November 2, 2021 election.

Holding a special election allows the Fort Bragg voters to make the decision on who will serve the remaining three years of the vacancy. Elections are a mainstay of our country's democracy and when Councilmembers Norvell and Lee were appointed to this next term in August 2020, a number of community members requested that a traditional election be held

¹ California Government Code Section 36512(b)(2).

in November 2020 or as an alternative the Councilmembers be appointed for just a two-year term.²

Selection of Mayor and Vice Mayor

Fort Bragg Municipal Code Section 2.04.030 provides that at the meeting at which the declaration of election results is made or if no general election is held (as is the case Councilmembers Lee's and Norvell's appointments) then the first regular meeting in December the Mayor and Vice Mayor are selected by the Councilmembers. After Councilmembers Lee and Norvell are sworn in on December 14, 2020, the Council will select its own Mayor and Vice Mayor.

RECOMMENDED ACTION:

Receive report and provide direction to staff on whether the Council will appoint a replacement for the upcoming vacant seat or call a special election for November 2, 2021 to fill the remaining three-year term. If the Council selects the appointment option, provide further direction to staff on the desired process to select an appointee.

ALTERNATIVE ACTION(S):

[California Government Code Section 36512](#) also allows cities to adopt an ordinance that to establish the process for filling a councilmember vacancy. The City has no such ordinance at this time. The Government Code provides three options for such an ordinance:

1. Require that a special election be called immediately to fill the vacancy to be held on the next regularly established election date not less than 114 days from date called.
2. Require that a special election be held when a petition with an established number of verified signatures is filed. A City Council would still have the option to call a special election, without such a petition.
3. Provide that an appointee will only hold office until the date of a special election, which must be called immediately but not less than 114 days from the call of the special election.

While an ordinance would clearly establish the process to fill a vacancy going forward, it would not provide the same flexibility as the default under Government Code Section 36512, as outlined in the Analysis Section of the staff report. Also keep in mind, future City Councils have the ability to adopt such an ordinance establishing the process for filling a vacancy or to modify an already existing ordinance, if a Council takes such action.

FISCAL IMPACT:

The current cost of calling a special election is estimated at \$15,000. Appointing a replacement for the vacancy would allow the City to avoid the cost of a special election and instead add replacement of the vacancy to the November 2022 election, the cost of which will not be avoided as this is a regular election.

² The City Attorney opined that this was not a legal option under California Elections Code Section 10229(a)(3).

GREENHOUSE GAS EMISSIONS IMPACT:

Calling a special election to replace the City Council vacancy resulting from Mayor Lee's resignation will have slightly higher impact on greenhouse gas emissions, since the ballots are transferred from Fort Bragg to the County seat in Ukiah by vehicles.

CONSISTENCY:

N/A

IMPLEMENTATION/TIMEFRAMES:

1. Within 60 days of the vacancy, projected to be March 1, 2021, the City Council must either appoint a replacement or call a special election.
2. If a special election is called, that election will take place on November 2, 2021.
3. If an appointment to fill the vacancy is made, at the regularly scheduled election on November 1, 2022, that open seat will be up for election along with the three regularly scheduled open seats. The replacement seat would only serve a two-year term to complete the full term of the vacancy.

ATTACHMENTS:

N/A

NOTIFICATION:

N/A