



OFFICE OF THE CITY CLERK

REPORT

REPORT TO THE HONORABLE MAYOR AND CITY COUNCIL

DATE: April 29, 2005

REPORT NO.: 05-02

SUBJECT: FILLING THE PENDING VACANCY IN THE OFFICE OF THE MAYOR

ISSUE

On Monday, April 25, 2005, Mayor Dick Murphy announced that he would resign effective July 15, 2005. On Wednesday, April 27, he filed a letter of resignation with the City Clerk's Office. The City Attorney, in his report, has addressed the legal issues related to Mayor Murphy's resignation. This report discusses the alternative of the appointment process or calling a special election, including a timeline for the appointment process and dates for potential special elections to fill the vacancy.

DISCUSSION

Charter §24 gives the Council several options for filling a vacancy in the office of the Mayor. Under that section, the Council has the authority to fill a vacancy by appointment. If the Council fails to fill the vacancy by appointment within 30 days after the vacancy, then the Council must immediately call a special election to fill the vacancy. In addition, Municipal Code §27.0705(a) specifies that as soon as it is known that there will be a vacancy in the office of the Mayor, the Council shall, at the next regularly scheduled City Council meeting, or at a special meeting called for that purpose, consider the question of whether the vacancy shall be filled by appointment or special election. Both of these options are discussed below.

FILLING THE VACANCY BY SPECIAL ELECTION

The procedures for filling a vacancy in the Office of the Mayor by special election are contained in Divisions 7 and 9 of Chapter 2, Article 7 of the San Diego Municipal Code (SDMC). SDMC §27.0907 specifies that an individual elected to fill the vacancy shall be declared elected for the unexpired term of his or her predecessor and assumes office at the time the City Council adopts the resolution declaring the results of such election to the vacant office.

SDMC §27.0902(b) specifies that if a vacancy occurs in the Office of the Mayor and the City Council chooses to fill the vacancy by election, or fails to fill the vacancy by appointment within thirty business days of the vacancy, the Council shall immediately call a special election to be held within 90 calendar days of the date the ordinance calling the election is adopted, unless there is a regular municipal, statewide, or countywide election scheduled to be held within 180 calendar days of the vacancy, in which case the City Council may consolidate the special election with that regular election.

SDMC §27.0906 specifies that “if no candidate receives a majority of votes cast in the special election, a special run-off election shall be held within 49 calendar days of the first special election, unless there is a regular municipal, statewide, or countywide election scheduled to be held within 90 calendar days of the proposed special run-off date, at which time the City Council may consolidate the special run-off election, with that regular election.”

The next regularly scheduled municipal election will be held on June 6, 2006. It is anticipated, however, that the Governor may call a special statewide election for November 8, 2005. The Governor has until June 13 to call such an election. The City Attorney has opined that since the election has not yet been called, a special primary election could not be consolidated with it. If however, the Governor calls the election, a special run-off election could be consolidated with that election with some potential cost savings.

The Registrar of Voters has estimated that a City-wide election will cost between two to three million dollars. Consolidated elections are generally less expensive because all participating jurisdictions pay a pro-rated share of the costs. At this time, however, we do not know how many entities would participate or the number of measures or races which might be included in a November 8th election. Thus, we are unable to provide an estimate of how much the City would save by consolidation.

The ordinance and resolution which will be presented to you on Monday, May 2, 2005, allows you to call for a Special Election to be held as early as Tuesday, July 26, 2005. This represents the earliest practical date available for the Special Election. It minimizes, as much as possible, the time between Mayor Murphy’s leaving office and the swearing-in of his successor. The Municipal Code establishes a 14-day nomination period for special elections to open on the 74th day before the election and close on the 60th day. The following schedule would apply:

		<u>Days Prior to Election</u>
Council calls Special Election	Monday, May 2, 2005	85
Nomination Period Opens	Friday, May 13, 2005	74
First Day to file papers	Friday, May 20, 2005	67

Nomination period closes	Friday, May 27, 2005	60
Date of Vacancy	Friday, July 15, 2005	11
Election Day	Tuesday, July 26, 2005	0
Certification of Results and Assuming Office	Tuesday, September 6, 2005 (if a candidate has received a majority vote)	
Run-Off Election (if needed)	Tuesday, September 13	+49
Certification of Results and Assuming Office	Monday, October 17	

It should be noted that the Council is not compelled to call the Special Election on the earliest practical date. Because the actual vacancy will not occur until July 15th, the Council has the discretion to adopt the ordinance calling the election at a later date. Once the election ordinance is adopted, however, the election must take place within 90 days of the adoption date.

We considered the idea of a special primary election which could be held on September 20th followed by a special run-off election, consolidated with a November 8th statewide special election, if one was called by the Governor. We have learned from the Registrar of Voters, however, that this would not be possible since we would not be able to meet the 81 day statutory deadline to provide the names of run-off candidates to that office.

In order for the City to consolidate a special run-off election with a special statewide election on November 8, 2005, an ordinance calling the run-off election would have to be adopted no later than August 8th. This would enable us to meet the August 12th deadline for consolidation, in accordance with state law. Names of run-off candidates would have to be provided to the Registrar by August 19, 2005. A special primary election held on July 26, 2005, would provide the time needed to give the Registrar of Voters the names of run-off candidates within this timeframe. A consolidated special run-off election held in November would also allow time for the Council to place propositions on the ballot.

DISCUSSION OF FILLING THE VACANCY BY APPOINTMENT

The procedures for filling a vacancy in the office of the Mayor by appointment are contained in Divisions 7 and 8 of Chapter 2, Article 7 of the San Diego Municipal Code (SDMC). An appointee's term of office would be limited to the time until the next regular municipal election, at which time the people of San Diego would elect a candidate to serve for the remainder of the unexpired term.

Within five calendar days of the date the Council has decided to fill the vacancy by appointment, the City Clerk must publish a notice of the vacancy and application period [SDMC §27.0803(c)]. The deadline for filing application materials must be 14 calendar days after the Council's decision [SDMC §27.0802(c)]. Consequently, should the Council reach this decision on May 2, the City Clerk must publish the vacancy notice no later than Saturday, May 7, and the deadline for filing application materials must be Monday, May 16.

Each applicant is required to file information which includes addresses for the past year; length of residence at the current address; date of birth; a five-year business or occupation history; information regarding education and military service; a statement of economic interests (Form 700); and a statement of qualifications expressing the applicant's qualifications. This statement may not exceed 500 words.

The applicant must also sign a statement under penalty of California perjury laws that he or she has been a resident and voter of the City for at least 30 calendar days prior to the date of filing his or her application for appointment.

In addition, the applicant must provide a Social Security number, so that the Police Department (SDPD) may conduct a check of each applicant. To the extent permitted by law, the SDPD shall access each applicant's criminal history information maintained by the department or by the California Department of Justice. The purpose is to determine whether the applicant is on parole for a felony conviction.

We would anticipate providing you with copies of the materials for all qualified applicants no later than Monday, May 23, 2005, following the Clerk's receipt of the background check results from the SDPD.

Before any appointment may be made, SDMC §27.0806 requires that the Council hold at least one public hearing for the purpose of considering the applications for appointment. The hearing must be scheduled so that the appointment can be made no later than 30 days after the date of the vacancy.

At the hearing, each applicant is allowed three minutes to make a presentation to the Council in support of his or her candidacy for appointment. The presiding officer may enable Councilmembers to ask brief questions for clarification concerning either the presentation, or matters contained in the application filed with the City Clerk. Such questions may concern but need not be limited to the candidate's background, philosophy of government, reasons for seeking appointment, and opinions on relevant municipal issues. Applicants are expected to answer each question [SDMC §27.0807(a)].

At the conclusion of the public hearing or at a later meeting, the Council may adopt a resolution appointing an applicant to fill the vacancy [SDMC §27.0807(b)]. However, if the Council determines that there are too many candidates to consider in a single public hearing, a second public hearing may also be held. [SDMC §§27.0806, 27.0808(a)].

For this to occur, pursuant to SDMC §27.0808(b), (c) and (d), by the end of the first hearing, the Council must select at least four but no more than six applicants to appear at the second hearing. The presiding officer announces the names of those applicants, and the date and time of the second hearing. As at the first hearing, applicants shall be expected to answer questions from Councilmembers. At the conclusion of the hearing, Council may then, or at a later meeting, adopt a resolution appointing an applicant to fill the vacancy.

Again, pursuant to Charter §24, the appointee's term of office would be limited to the time until the next regular municipal election, at which time the people of San Diego would elect a candidate to serve for the remainder of the unexpired term.

The individual appointed to fill the vacancy is eligible to run for that office for the next succeeding term [SDMC §27.0809(b)].

SUMMARY

Should the City Council wish to call a special election to fill the pending vacancy in the office of the Mayor, an election ordinance could be adopted on May 2, 2005, calling a special election to be held on July 26, 2005. The nomination period for this election would open on Friday, May 13, 2005, and close on May 27. An election could also be held at a later date, but would have to be held within 90 days of the adoption of the election ordinance. A run-off election, if needed, would be scheduled for September 13, 2005. A run-off election, however, could also be consolidated with a November 8 special statewide election should the Governor call this election by June 13, 2005. Alternately, the City Council may choose to fill the vacancy by appointment. Should the Council reach this decision on May 2, the City Clerk must publish the vacancy notice no later than Saturday, May 7, and the deadline for filing application materials must be Monday, May 16. One or two public hearings may be held to consider the applicants' qualifications, but must be scheduled so that the appointment can be made no later than 30 days after the date of the vacancy.

I hope this information is of some assistance in your deliberations on this matter. Should you have any questions, please contact me or Assistant City Clerk Joyce Lane at 533-4081.



Charles G. Abdelnour
City Clerk

CGA:JL:BS

cc: City Attorney
City Manager