

January 28, 1994

REPORT TO THE COMMITTEE ON RULES, LEGISLATION,  
AND INTERGOVERNMENTAL RELATIONS

POSSIBLE CHARTER AMENDMENTS FOR  
FILLING CITY COUNCIL VACANCIES

At its meeting on July 26, 1993, the City Council discussed alternatives to the current method for filling Council vacancies required by Charter section 12. The discussion grew out of a Joint Report of the City Attorney and City Clerk dated July 15, 1993, on the same topic (copy attached). The City Council referred the matter back to Rules Committee for further discussion and clarification. Also at that Council meeting, Councilmember Stallings asked to meet with the City Attorney and City Clerk to explore alternatives.

To assist the Rules Committee, this report sets forth an outline of the current Charter provisions, as well as a detailed description of three (3) distinct alternatives for filling Council vacancies.

CURRENT CITY CHARTER

The existing language contained in Charter section 12 provides for the following in the event of a vacancy in the office of a Councilmember:

- A single special election within the Council District, to be held within ninety (90) days of the vacancy;

- Top vote-getter in that special election is elected to fill the vacancy;

- Elected candidate serves only until the next regular municipal election (for any office) - not necessarily the remainder of unexpired term - at which time another special election and, if necessary, a special run-off election, is conducted to determine who shall serve the remainder of the unexpired term.

- Council has the option to forgo the special election and appoint a replacement only if the vacancy occurs within one hundred (100) days of any regular municipal election.

These provisions, and specifically the requirement that the victorious candidate in the special vacancy election serve only until the next regular municipal election, can result in two or even three elections being conducted within a few months of one another for the same Council seat -- all to determine who shall serve the remainder of the unexpired term.

The City experienced this situation just last year, with the vacancy in Council District 8 and the subsequent election of now-Councilmember Juan Vargas in the single special election conducted last February. Under the existing Charter, Councilmember Vargas, to retain his newly won seat, had to face election in another special election only seven (7) months after assuming office. Had he not received a majority of the votes cast in that September election, he would have faced a third special election, a run-off in November, in order to serve out the remaining two years of the term.

Moreover, the current Charter provides the Council with the option to forgo the special election and appoint a replacement to fill the vacancy should the vacancy occur within one hundred (100) days of a regular municipal election. This 100-day period is inadequate to prevent elections for the same Council seat from occurring within weeks of one another. For example, should a vacancy occur 101 days prior to a regular election, the Council must, by Charter, hold a special election within 90 days, which, even under the best of circumstances, would be conducted within two weeks of the regular election.

#### OPTIONS

Based on Councilmembers' comments, we have developed three (3) options for your consideration. All three eliminate the existing requirement that the candidate elected to fill a vacancy serve only until the next municipal elections, providing, instead, that the victorious candidate serve the remainder of the unexpired term.

All three increase the period of time the Council retains the option to appoint a replacement, but limit that option to only one hundred eighty (180) days prior to the a regular election for that specific seat.

Finally, all three contain a provision allowing the Council the option to consolidate the special vacancy election with any upcoming regular municipal election -- at substantial savings in election costs -- should the vacancy occur within one hundred and eighty (180) days of any such election.

Including the above provisions, Option A leaves intact the requirement for a single special election to be held within ninety (90) days of the vacancy. Option B retains the requirement for a single special election, but allows the Council

one hundred eighty (180) days rather than ninety (90) days to conduct the special election. Option C adds the requirement of a special run-off election, if necessary, should the vacancy occur with more than thirty-one (31) months remaining in the unexpired term.

To assist in your deliberations, included as part of this report are three (3) attachments: Attachment 1 is the regular municipal elections schedule for 1994-1998; Attachment 2 is a comparison of the current Charter and each of the three options presented in this report; and Attachment 3 contains general information on special election costs and scheduling.

At this point, it should be noted that the City is not compelled to wait until a vacancy actually occurs to begin the elections process or even hold the election. Given advance notice, that is, a letter of resignation containing a future effective date, the City may proceed with calling and conducting the special election. With enough advance notice, the period of time the Council office is actually vacant could conceivably be reduced to zero.

Options A, B and C are discussed in greater detail below:

#### Option A

This option provides for the following:

- A single special election in the Council District, held within ninety (90) days of the date of vacancy;

- Top vote-getter is elected;

- Elected candidate serves the remainder of the unexpired term;

- Council has the option to forgo the special election and appoint a replacement if the vacancy occurs within one hundred eighty (180) days prior to the regular elections for that specific seat, with the appointee to serve the remainder of the unexpired term;

- Council has the option to consolidate the special election, if possible, with an upcoming regular municipal election for any office if the vacancy occurs within one hundred eighty (180) days.

In general, this option requires a vacancy to be filled by a single special election regardless of when in the term the vacancy occurs. Exceptions are provided when the vacancy occurs within one hundred eighty (180) days prior to either a regular election for that particular seat -- in which case the Council can opt to appoint -- or of a regular municipal election for any other office -- in which case the Council can opt to wait and consolidate the special election with the upcoming regular

election. These exceptions are included so that Council can 1) avoid having to call a special election to be held within weeks of the regular elections for that seat, and 2) have some increased flexibility to take advantage of the significant cost savings -- anywhere from 50-95 percent -- offered by consolidating the special election with an upcoming municipal election.

Under this option, a candidate may be elected to the vacant seat with less than a majority vote, and could serve a term ranging from a few months to nearly four (4) years, depending on when the vacancy occurs.

#### Option B

This option provides for the following:

- A single election, to be held as soon as practicable but no later than one hundred eighty (180) days from the date of vacancy;

- Top-vote getter is elected;

- Elected candidate serves the remainder of the unexpired term;

- Council has the option to forgo the special election and appoint a replacement if the vacancy occurs within one hundred eighty (180) days prior to the regular elections for that specific seat, with the appointee to serve the remainder of the unexpired term.

This option is nearly identical to Option A, except that it provides the City Council additional flexibility in setting the date of the special election. By increasing to one hundred eighty (180) days the period in which the Council must conduct the special election, the Council will have the ability to consider the time of year, holidays, workload, but, most importantly, the proximity of regular elections in setting the date for the special election. For example, should a vacancy occur on a date before a regular statewide election but just after the deadline for consolidation (allowing for a two-week nomination period, that deadline is 102 days before the election) the Council, under Option A, would have no choice but to hold a special election within days of the regular statewide election.

Under Option B (and Option C, to follow) the Council would have the flexibility in the above example to allow for a more desirable separation in time between the statewide election and the subsequent special election.

(A literal reading of the current Charter indicates the Council in this example would have the option, assuming the vacancy occurred within one hundred (100) days of the regular statewide election, to forgo the special election and appoint a

replacement. Beginning in 1996, however, an appointee under this scenario would serve for more than two full years, since the next set of municipal elections would not occur until 1998. It is fairly certain this was not the Council's intent.)

#### Option C

This option provides for the following:

- A special election, to be held as soon as practicable, but no later than one hundred eighty (180) days from the date of vacancy;

- If the vacancy occurs with thirty-one (31) or fewer months remaining in the term, the top vote-getter in that special election is elected;

- If the vacancy occurs with more than thirty-one (31) months remaining in the term, a special run-off election would be required and conducted as soon as practicable should no candidate receive a majority of votes cast in the special election;

- The elected candidate shall serve the remainder of the unexpired term;

- Council has the option to forgo the special election and appoint a replacement if the vacancy occurs within one hundred eighty (180) days of the regular elections for that specific seat, with the appointee to serve the remainder of the unexpired term;

This option adds the requirement of a special run-off election should the vacancy occur with more than thirty-one (31) months remaining in the term.

The thirty-one (31) month threshold provides the Council enough time, should the vacancy occur without any prior notice, to call for and conduct both a special vacancy election and run-off election to ensure the elected candidate would serve a term of at least two (2) years at the time he or she is sworn in.

This allows for the run-off to be consolidated with the statewide general election held the first week in November. The victorious candidate would assume office approximately one month later, following certification of the official canvass of results. The victor could, in fact, be sworn in at the inauguration of the four successful candidates in the regular City Council races up for election that same year.

The special run-off election, required in the event no candidate receives a majority of votes cast in the special election, is consistent with the format for regular elections for Council office. Establishing a threshold for such a requirement recognizes the Council's desire to avoid a series of special elections in close proximity to one another for a significantly

reduced term. Should the vacancy occur with thirty-one (31) or fewer months left in the term, the vacancy can be filled by a single election. Also, in fact, there will exist a small "window" due to legal deadlines for consolidating elections in which a candidate may be elected in such a "plurality" election to a term exceeding two (2) years.

On the other hand, this option provides that should a vacancy occur within the first seventeen (17) months of a Councilmember's normal four (4) year term,<sup>F</sup> In the case of Councilmembers elected in 1993 and 1995 to three (3) year terms, the vacancy would have to occur within the first five (5) months.

the vacancy must be

filled with a candidate elected by a majority or near majority vote<sup>F</sup>

With the presence of one or more write-in candidates, it is possible the winner of the run-off election could garner less than a majority of votes cast.

to serve the remaining two or more years of the unexpired term.

As a practical matter, requiring a run-off election would add from six (6) weeks to fifteen (15) weeks to the election process, depending on whether the run-off is consolidated with a statewide election, and thereby add to the amount of time the office may be vacant.

#### SUMMARY

Presented for your consideration in this report are three options for possible amendments to the Charter in regards to filling vacancies in Council office. We await your further direction in this matter and are prepared to draft the appropriate ballot language for your approval.

Respectfully submitted,

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City Attorney

City Clerk

CCM:MDH:jrl:014(043.1)

Attachments

RC-94-6

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