

CITY OF CLEARLAKE

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SPECIAL MEETING OF CLEARLAKE CITY COUNCIL & REDEVELOPMENT SUCCESSOR AGENCY

CLEARLAKE CITY HALL COUNCIL CHAMBERS
14050 OLYMPIC DRIVE
CLEARLAKE, CA 95422

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| MONDAY | MAY 13, 2019 | 3:30 P.M. |
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ROLL CALL:

- _____ Vice Mayor Russ Cremer
- _____ Councilmember Phil Harris
- _____ Councilmember Joyce Overton
- _____ Councilmember Dirk Slooten

MEETING PROCEDURES:

All items on the agenda will be open for public comment before final action is taken. Citizens wishing to introduce written material into the record at the public meeting on any item are requested to provide a copy of the written material to the City Clerk prior to the meeting date so that the material may be distributed to the City Council prior to the meeting. Speakers must restrict comments to the item as it appears on the agenda and stay within a three-minute time limit. The Mayor has the discretion of limiting the total discussion time for an item. As a courtesy to others, please turn off cell phones and any other distracting devices.

PLEDGE OF ALLEGIANCE

BUSINESS:

1. Filling Council Vacancy as a Result of Mayor Nick Bennett's Resignation
Recommended Action: By Resolution, determine whether to make an appointment to replace Mayor Bennett or hold a special election; Resolution No. 2019-23
2. Consideration of Appointment of Mayor and/or Vice Mayor for the Remainder of the Calendar Year 2019
Recommended Action: Discuss with possible action

CLOSED SESSION:

(1) CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION: (Government Code 54956.9) – City of Clearlake v. PG&E Corporation, et al., Case No. CV 1:17-CV-419398, Lake County Superior Court

ADJOURNMENT

AMERICANS WITH DISABILITY ACT (ADA) REQUESTS

If you need disability-related modification or accommodation, including auxiliary aids or services, to participate in this meeting, please contact Melissa Swanson, City Clerk, at the Clearlake City Hall, 14050 Olympic Drive, Clearlake, California 95422, phone (707) 994-8201, ext. 106, or via email at mswanson@clearlake.ca.us at least 72 hours prior to the meeting, to allow time to provide for special accommodations.

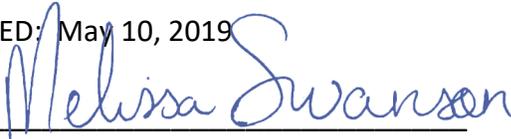
AGENDA REPORTS

Staff reports for each agenda item are available for review at City Hall located at 14050 Olympic Drive during normal business hours. Members of the public are invited to come and comment on any item under discussion.

Any writings or documents pertaining to an open session item provided to a majority of the City Council less than 72 hours prior to the meeting, shall be made available for public inspection at the front counter at City Hall located at 14050 Olympic Drive during normal business hours.

POSTED: May 10, 2019

BY:



Melissa Swanson, Administrative Services Director/City Clerk

CITY OF CLEARLAKE

CITY COUNCIL STAFF REPORT

MEETING OF: May 13, 2019

Agenda Item No. 1

Subject: Filling Council Vacancy as a Result of Mayor Nick Bennett’s Resignation **Date:** May 10, 2019

From: Ryan Jones, City Attorney
Alan Flora, City Manager

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| Reviewed & Approved:  |
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Recommended Action: By Resolution, determine whether to make an appointment to replace Mayor Bennett or hold a special election; Resolution No. 2019-23

Background/History:

With the resignation of Mayor Nick Bennett on May 9, 2019, that position is currently vacant. Mayor Bennett was most recently elected in November 2018, and this term was to expire in November 2020. The filling of that vacancy is outlined in the Government Code and the Council’s options are described below.

Analysis/Discussion:

California Government Code §36512 contains the applicable law for filling vacant seats or elected positions in general law cities. Section 36512 reads, in its entirety, as follows:

- (a) If a vacancy occurs in an appointive office provided for in this chapter, the council shall fill the vacancy by appointment. A person appointed to fill a vacancy holds office for the unexpired term of the former incumbent.*

- (b) If a vacancy occurs in an elective office provided for in this chapter, the council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy.*

- (1) 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 person elected to fill a vacancy holds office for the unexpired term of the former incumbent.*

(2) If the council fills the vacancy by appointment, the person appointed to fill the vacancy shall hold office pursuant to one of the following:

(A) If the vacancy occurs in the first half of a term of office and at least 130 days prior to the next general municipal election, the person appointed to fill the vacancy shall hold office until the next general municipal election that is scheduled 130 or more days after the date the council is notified of the vacancy, and thereafter until the person who is elected at that election to fill the vacancy has been qualified. The person elected to fill the vacancy shall hold office for the unexpired balance of the term of office.

(B) If the vacancy occurs in the first half of a term of office, but less than 130 days prior to the next general municipal election, or if the vacancy occurs in the second half of a term of office, the person appointed to fill the vacancy shall hold office for the unexpired term of the former incumbent.

(c) Notwithstanding subdivision (b) and Section 34902, a city may enact an ordinance that does any of the following:

(1) Requires that a special election be called immediately to fill every city council vacancy and the office of mayor designated pursuant to Section 34902. The ordinance shall provide that 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.

(2) Requires that a special election be held to fill a city council vacancy and the office of mayor designated pursuant to Section 34902 when petitions bearing a specified number of verified signatures are filed. The ordinance shall provide that the special election shall be held on the next regularly established election date not less than 114 days from the filing of the petition. A governing body that has enacted such an ordinance may also call a special election pursuant to subdivision (b) without waiting for the filing of a petition.

(3) Provides that a person appointed to fill a vacancy on the city council holds office only until the date of a special election which shall immediately be called to fill the remainder of the term. The special election may be held on the date of the next regularly established election or regularly scheduled municipal election to be held throughout the city not less than 114 days from the call of the special election.

(d) (1) Notwithstanding subdivision (b) and Section 34902, an appointment shall not be made to fill a vacancy on a city council if the appointment would result in a majority of the members serving on the council having been appointed. The vacancy shall be filled in the manner provided by this subdivision.

(2) The city council may call an election to fill the vacancy, to be held on the next regularly established election date not less than 114 days after the call.

(3) If the city council does not call an election pursuant to paragraph (2), the vacancy shall be filled at the next regularly established election date.

Sub-section 36512(a) does not apply in the instant case because the City Council position is elected, not appointed position.

Thus, sub-section 36512(b) applies in the instant case, as we are dealing with an elected office. This sub-section provides that if a vacancy occurs, the city council has sixty (60) days from the commencement of the vacancy to either appoint a person to fill the vacant seat, or to call a special election to fill the vacancy. If a special election is called, it must be held on the next regularly scheduled election date not less than one hundred fourteen (114) days from the call of such election. Any person appointed or elected holds office for the unexpired term of the former incumbent.

Sub-section 36512(c) provides three (3) potential additional procedures for filling a vacant city council seat, but such procedures can only be used if the city has previously enacted an ordinance which allows for the use of such procedures. No such ordinance has been adopted by the Clearlake City Council.

Therefore, since Mayor Bennett's position became vacant as of the date his resignation on May 9, 2019, the City Council has until July 8th to either:

1. Fill the vacancy by appointment by the City Council with a majority vote. The appointee will serve the rest of Mayor Bennett's term, which is until November 3, 2020, or;
2. Call a special election to fill the vacancy, which election shall be held on the next regularly established election date occurring not less and one hundred fourteen (114) days after the call of the special election. Please note that in this case, the next regularly established election date occurring not less and one hundred fourteen (114) is March 3, 2020.

Budget Impacts:

There are no costs to appoint a replacement Council Member. Costs associated with calling a special election are pending a cost estimate by the County Registrar's office.

Legal Review:

City Attorney Jones has reviewed this item and finds that the recommended action complies with the law.

Recommendation:

The Council has two options: 1) Adopt Resolution No. 2019-23 to direct the City Clerk to prepare applications and schedule interviews for the appointment of a Council Member to fill the vacancy created by Mayor Bennett's resignation. Pursuant to Government Code Section 54974, the appointment shall not be made by the legislative body for at least ten working days after the posting of the notice of vacancy. Administrative Services Director/City Clerk Swanson posted the

notice of vacancy as required on May 10, 2019 and the appointment can be made by the Council on or after May 28th.

Alternatively, the Council may adopt Resolution No. 2019-23 calling for a special election on March 3, 2020 to fill the vacancy.

ATTACHMENTS

Attachment A- Resolution Directing City Clerk to Solicit Applications

Attachment B – Resolution (Alternative)

RESOLUTION 2019-23
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLEARLAKE
DIRECTING THE CITY CLERK TO PREPARE APPLICATIONS TO FILL THE VACANCY IN THE
OFFICE OF CITY COUNCIL

WHEREAS, in November 2016, S. Nick Bennett was elected to the City Council for a four (4) year term, which expires in November, 2020; and

WHEREAS, on May 9th, 2019, Mayor Bennett announced his resignation from the City Council effective immediately; and

WHEREAS, California Government Code Section 36512 (b) sets forth the procedure for filling vacancies in an elective office and provides that the City Council shall, within sixty (60) days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy; and

WHEREAS, the City Council has determined that it is in the City's best interest to fill the position of Council Member by appointment; and

WHEREAS, such appointment must be made by July 8, 2019;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Clearlake as follows:

1. The City Council hereby directs the City Clerk to prepare and disseminate an application form for all qualified applicants who desire to fill the vacancy created on the City Council and to take appropriate steps to publicize the application, deadline and Appointment Committee interview dates (if applicable), and Council interview dates;
2. If more than ten applications for City Council Member are received by the City Clerk by the prescribed deadline, the City Council hereby appoints the Vice Mayor, and the Chair of Planning Commission to serve as an ad hoc Appointment Committee to review the applications of and interview all qualified individuals at dates selected by the City Clerk, and from among those candidates to select the top three candidates for the City Council to interview at a properly noticed meeting of the City Council;
3. The City Council hereby authorizes and directs the City Manager, City Attorney, and City Clerk ("City Officers"), and each of them, to do any and all things and to execute and deliver any and all documents that they may deem necessary or advisable, and allocate and expend funds necessary and proper to comply with the intent of this Resolution. All actions heretofore taken by City officers and designees that are in conformity with the purposes and intent of this Resolution are hereby ratified, confirmed, and approved in all respects.

4. This Resolution shall take effect immediately after its passage.

Passed and Adopted this 13th day of May, 2019 by the following vote:

AYES:

NOES:

ABSENT OR NOT VOTING:

Vice Mayor, City of Clearlake

ATTEST:

City Clerk, City of Clearlake

RESOLUTION 2019-23
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLEARLAKE
CALLING A SPECIAL ELECTION TO FILL THE VACANCY IN THE OFFICE OF CITY COUNCIL
AND MERGING THE SPECIAL ELECTION WITH THE PRIMARY ELECTION OF
MARCH 3, 2020

WHEREAS, in November 2016, S. Nick Bennett was elected to the City Council for a four (4) year term, which expires in November, 2020; and

WHEREAS, on May 9th, 2019, Mayor Bennett announced his resignation from the City Council effective immediately; and

WHEREAS, California Government Code Section 36512 (b) sets forth the procedure for filling vacancies in an elective office and provides that the City Council shall, within sixty (60) days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy; and

WHEREAS, California Government Code Section 36512 (b) (1) dictates that if the City 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. The person elected to fill the vacancy at the special election shall hold office for the unexpired balance of the term of office.

WHEREAS, the City Council has determined that it is in the City's best interest to allow the voters of the City to elect the Council Member to replace Mayor Bennett;

WHEREAS, the next regularly established election not less than 114 days from this date is March 3, 2020; and

WHEREAS, the City Council desires to defer to the voters of the City of Clearlake for their choice of Council Member rather than to appoint a member to the City Council who would not necessarily reflect the positions of the electorate.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Clearlake as follows:

1. Pursuant to the requirements of Government Code Section 36512, the City Council hereby calls a special election to fill the vacancy to the City Council; and
2. The next regularly established election date is March 3, 2020.
3. This Resolution shall take effect immediately after its passage.

Passed and Adopted this 13th day of May, 2019 by the following vote:

AYES:
NOES:
ABSENT OR NOT VOTING:

Vice Mayor, City of Clearlake

ATTEST:

City Clerk, City of Clearlake

CITY OF CLEARLAKE

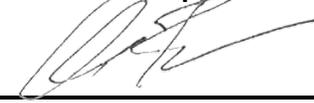
CITY COUNCIL STAFF REPORT

MEETING OF: May 13, 2019

Agenda Item No. 2

Subject: Consideration of Appointment of Mayor and/or Vice Mayor for the Remainder of Calendar Year 2019 **Date:** May 10, 2019

Reviewed & Approved:



From: Melissa Swanson, City Clerk

Recommended Action: Discuss with possible action

ISSUE STATEMENT AND DISCUSSION:

Former Mayor Nick Bennett resigned from the Council on May 9th, leaving the Mayor seat vacant. The Mayor and Vice Mayor seats are appointed annually within the Council, typically at the last Council meeting of the year for the following calendar year. The selection of Mayor and Vice Mayor is set forth in the Norms and Procedures Section 2.1 as follows:

In December of each year, the City Council shall select and appoint a Mayor and Vice Mayor by majority vote of the Council from among its members. Selection and appointment shall be at the first meeting of a new term following each General Municipal Election or at the first meeting in December during non-election years. The term of the Office of the Mayor and Vice Mayor shall be for a 12-month period commencing on January 1st of each year, unless otherwise provided for by majority vote of the Council. The Mayor remains as one member of the City Council and has no rights or authority different from any other member of the Council.

Staff recommends the Council discuss and decide if the appointment of a new Mayor is appropriate at this time. Alternatively, the Council may wait until a successor for former Mayor Bennett is appointed or elected to choose a new Mayor.

FINANCIAL AND/OR POLICY IMPLICATIONS:

There are no financial or policy implications with this item.