

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Joseph M. Montes, City Attorney

DATE: September 25, 2008 (CC Meeting of 10/1/08)

SUBJECT: Consider Introduction and Adoption of an Ordinance to Repeal Moorpark Municipal Code Section 2.04.050, Entitled, "Filling of Vacancies"

BACKGROUND/DISCUSSION

At the September 17, 2008 regular meeting of the Moorpark City Council, the City Council gave direction to the City Attorney's office to prepare an ordinance that would repeal existing Moorpark Municipal Code Section 2.04.050.

Section 2.04.050 requires that in the event of a Council vacancy, the City Council shall call a special election to fill the vacancy for the balance of the vacant seat's term. Additionally, the City Council is required to appoint someone to fill the vacant seat until the special election can be held. It is anticipated that a vacancy will occur on the Council if and when Councilmember Parvin is sworn in as Mayor on or about December 3, 2008. Accordingly, when Councilmember Parvin is sworn in as Mayor, she will vacate her council seat by operation of law. At that point, under section 2.04.050, the Council would be required within 30 days to appoint someone to fill the vacant seat until the time of a special election. Additionally, the Council would be required to call a special election, which would occur in June of 2009 under governing Election Code requirements. Anyone elected in June of 2009 would serve on the Council until approximately December 2010 (when the certification of election results for the November 2010 election is anticipated to occur).

The attached ordinance would repeal section 2.04.050. As a result, the Council would be required to fill any vacancy on the City Council pursuant to Government Code section 36512. That section would allow the Council to either appoint someone to fill the vacant seat until approximately December 2010, or to call a special election to occur in June of 2009, where any successful candidate would serve until approximately December 2010.

The attached ordinance requires two readings and the passage of 30 days to be effective. In order to be effective prior to December 3, 2008 (the anticipated date when

election results will be certified and candidates sworn into office), the second reading must occur prior to November 2, and may only occur at a regular or adjourned regular meeting. (Government Code section 36934). The second regular meeting in October is October 15, 2008. If the Ordinance is given a first reading on October 1, 2008 and nothing else is done, the Ordinance will be brought back for second reading on October 15, 2008, pursuant to normal City process.

Councilmember Millhouse has indicated he will not be present on October 15, 2008 due to a prior commitment and had requested that the Council consider the second reading take place on a date other than October 15. At the meeting of September 17, 2008, the date of October 8, 2008 was discussed. If the Council wishes to consider adoption of the Ordinance on October 8, 2008, the Council will need to continue the second reading to an adjourned regular meeting to occur on October 8, 2008. [Note: the date of the adjourned regular meeting must be more than 5 days after the first reading of the Ordinance--so October 7 or later]

If the City Council determines to repeal Municipal Code Section 2.04.050, then the following would be the appropriate motions:

1. By motion direct the City Attorney to read, by title only, the Ordinance, waive further reading and declare the Ordinance introduced for first reading; and
2. By motion, direct that when the October 1, 2008 meeting is adjourned that it be adjourned to a meeting date of October 7, 2008 or later, at a specified time as a regular adjourned meeting and that the second reading of the Ordinance be continued to that adjourned regular meeting for consideration by the City Council.

FISCAL IMPACT

Adoption of the proposed ordinance would give the City Council the option of not holding a special election to fill the anticipated Council vacancy. Were the Council to select such option it is anticipated that approximately \$100,000 would be saved.

STAFF RECOMMENDATION

Direct staff as deemed appropriate.

Attachment: Draft Ordinance

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, TO REPEAL MOORPARK MUNICIPAL CODE SECTION 2.04.050, ENTITLED, "FILLING OF VACANCIES"

WHEREAS, Municipal Code section 2.04.050, entitled "Filling of Vacancies" has not been amended or updated since its adoption via Ordinance 77 in 1986;

WHEREAS, it is expected that a vacancy on the city council will occur after the election to occur on November 4, 2008;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 2.04.050 of the municipal code, entitled "Filling of Vacancies" is hereby repealed.

SECTION 2. If any section, subsection, sentence, clause, phrase, part or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, phrases, parts or portions be declared invalid or unconstitutional.

SECTION 3. This Ordinance shall become effective thirty (30) days after its passage and adoption.

SECTION 4. The City Clerk shall certify to the passage and adoption of this Ordinance; shall enter the same in the book of original ordinances of said City; shall make a minute of the passage and the adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted; and shall, within fifteen (15) days after the passage and adoption thereof, cause the same to be published once in the Moorpark Star a newspaper of general circulation, as defined in Section 6008 of the Government Code, for the City of Moorpark, and which is hereby designated for that purpose.

PASSED AND ADOPTED this ____ day of October, 2008

Patrick Hunter, Mayor

ATTEST:

Deborah S. Traffenstedt, City Clerk