

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Deborah S. Traffenstedt, Deputy City Manager *DST*
Maureen Benson, City Clerk *mb*

DATE: October 27, 2011 (CC Meeting of 11/2/2011)

SUBJECT: Consider an Amendment to Section 2.04.050, Filling of Vacancies, of Chapter 2.04, City Council, of Title 2 of the Moorpark Municipal Code

BACKGROUND AND DISCUSSION

The California Legislature in 2010 enacted an amendment to Section 36512 of the Government Code, which extends the time period to either fill a vacancy in an elected office by appointment or call a special election to fill the vacancy within 60 days from the commencement of the vacancy. Prior to the amendment, the time period to either make the appointment or call the election was 30 days. Attached to this agenda report is a copy of the current Government Code Section 36512, as amended.

Section 2.04.050 of the Moorpark Municipal Code currently reads as follows:

2.04.050 Filling of vacancies.

If a vacancy occurs on the city council, within thirty (30) days from the commencement of the vacancy, the city council shall fill the vacancy by appointment. A person appointed to fill a vacancy on the city council shall hold office only until the date of a special election to fill the remainder of the term. The special election shall be called and held within the time periods as provided in Section 36512.2 of the Government Code.

Since the Government Code now allows up to 60 days to fill the vacancy by appointment, staff is recommending that the City Council consider amending the City's Municipal Code to cross-reference Section 36512 of the Government Code and delete the specific time period in the City's Municipal Code for the appointment. The longer time period of up to 60 days is preferred to provide time for conducting recruitment prior to making an appointment to fill a city council vacancy.

Government Code 36512 also permits a city to enact different ordinance options for filling a vacancy (reference Attachment). A summary of these options is as follows:

- **Section 36512(a)** does not apply to the Moorpark Municipal Code as it provides direction for filling the vacancy of an **appointive office**, of which we have none on the Council.

- **Pursuant to Section 36512(b)**, Section 2.04.050 of the Municipal Code could be deleted or amended to have Government Code Section 36512(b) be controlling, which would permit a council within 60 days from the commencement of a city council or mayor vacancy to either fill a vacancy by appointment or call a special election. This option retains the greatest flexibility.
- **Pursuant to Section 36512(c)(1)**, Section 2.04.050 of the Municipal Code could be amended to require a special election be called immediately to fill every city council and mayor vacancy.
- **Pursuant to Section 36512(c)(2)**, Section 2.04.050 of the Municipal Code could be amended to require a special election be held to fill a city council and mayor vacancy when petitions bearing a specified number of verified signatures are filed. Pursuant to Government Code Section 36512(b), a council may also call a special election without waiting for the filing of a petition.
- **Pursuant to Section 36512(c)(3)**, Section 2.04.050 of the Municipal Code could continue to include the existing language pursuant to this Section of the Government Code, which 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 City's Municipal Code Section 2.04.050 incorporates the option described in Section 36512(c)(3) of the Government Code, requiring an appointment only until the date of a special election. The City Council may want to consider at this time whether this option will be retained or whether more flexibility may be preferred, such as is provided by Section 36512(b). Some of the factors that could be considered for determining an appointment versus a special election could include the length of remaining term and whether a stand-alone or consolidated election would be required based on the election calendar established by State law.

At a minimum, staff recommends the City Council direct staff to prepare a draft ordinance to amend Section 2.04.050 to cross-reference Section 36512 of the Government Code and delete the 30-day time period for the appointment. Staff is requesting that the Council provide direction regarding whether any other changes to Section 2.04.050 should also be incorporated.

FISCAL IMPACT

The potential fiscal impacts pertain to the cost of having an election to fill a City Council vacancy. If the City Council determines to fill a vacancy by calling a Special Election, staff has received recent estimates for private contract election services for a City stand-alone special vote-by-mail only ballot election at an approximate cost of \$72,000 and a precinct election at an approximate cost of \$80,000. If the Ventura County Elections Division were to provide the contract election services, they have estimated the cost of a combined, consolidated election at approximately \$10,000; a stand-alone election with precincts at an approximate cost of \$90,000; and a stand-alone, all vote-by-mail election at an approximate cost of \$95,000. These costs are based upon an estimated 35% voter turn-out.

STAFF RECOMMENDATION

Direct staff to draft an ordinance amending Section 2.04.050 of the Municipal Code consistent with State law, as described in the agenda report, and direct staff whether any other amendment to Section 2.04.050 should also be incorporated as deemed appropriate.

Attachment: Government Code Section 36512

Government Code Section 36512:

(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. 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 appointed or elected to fill a vacancy holds 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.