

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Deborah S. Traffenstedt, Deputy City Manager *DST*

DATE: December 1, 2011 (CC Meeting of 12/7/2011)

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

Staff scheduled an agenda item for discussion at the City Council's November 2, 2011, meeting (prior report is included as Attachment B) pertaining to amendment to Section 2.04.050, Filling of Vacancies, of Chapter 2.04, City Council, of the Moorpark Municipal Code (MMC). At the November 2 meeting, staff requested postponement of discussion to permit further research on what revisions were necessary to bring Section 2.04.050 of the MMC into full compliance with State law.

After further discussion with the City Attorney, a summary of the problems with the current Section 2.04.050 is as follows:

- Section 36512 of the California Government Code sets forth the legal authority to fill a vacancy that occurs for an elective office. The current language in Section 2.04.050 is not in compliance with the specific wording of the ordinance options contained in Section 36512 of the California Government Code. The Government Code language limits the City's authority and our MMC does need to be consistent with what is permitted by State law.
- One of the language inconsistencies is that there is an incorrect reference to a thirty (30) day time period from the commencement of the vacancy for the city council to fill the vacancy by appointment. In 2010, the California Legislature 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.
- Another language inconsistency is there is a reference in Section 2.04.050 of the MMC to a Government Code Section 36512.2 that no longer exists.
- Section 2.04.050 does not include a specific reference to the elected office of mayor, and a vacancy for the elected office of the mayor would need to be filled consistent with either Section 36512(b) or Section 34902(a) of the Government Code (see Attachment A for the referenced Government Code excerpts). If Section 2.04.050 is to be retained, there should be a cross-reference to the applicable Government Code sections for the office of mayor.

To permit the drafting of an ordinance that will correct Section 2.04.050 of the MMC to be in compliance with State law, and accomplish the City Council's preferences for the filling of a vacancy, staff is requesting that the Council consider the following questions and supplemental information that follows each of the listed questions.

1. Does the City Council want to mandate a special election to fill every city council and office of mayor vacancy, or just have that as an option?

An election cannot be held less than 114 days from the call of the special election. Mandating the election could result in an election being required for a short term, but not less than 114 days from the call of the election. There is no option that would permit a City to add additional language regarding what length of term would mandate a special election.

An example of a potential worst-case scenario would be if the City Council is required to call a special election to be held on the regularly established first Tuesday in June in an even numbered year to fill a vacancy, and the term for that elected position ends in November of that even numbered year. The City would be paying for two elections in one year, and the remaining term of office after the June special election would only be five months.

The established election dates per Section 1000 of the State Elections Code are:
(a) The second Tuesday of April in each even-numbered year,
(b) The first Tuesday after the first Monday in March of each odd-numbered year,
(c) The first Tuesday after the first Monday in June in each year,
(d) The first Tuesday after the first Monday in November of each year, and
(e) The first Tuesday in February of each year evenly divisible by the number four.

The City would also be permitted by State law to fill a vacancy by calling a special election to be conducted solely by mailed ballot. There is more flexibility on scheduling a mail ballot election, but not necessarily a cost savings. A mail ballot election date must be:

- (a) Not less than 114 days after the call of the election,*
- (b) The election cannot occur on the same date as a statewide primary or general election, and*
- (c) The election must occur on a Tuesday (not following a Monday holiday).*

2. Does the City Council want to have the option to appoint or call an election for the office of mayor and to fill a city council vacancy?

This option could be achieved by deleting Section 2.04.050 of the MMC. If the City does not adopt an ordinance with one of the options identified in Section 36512(c) of the Government Code, Section 36512(b) and Section 34902(a) of the Government Code would be controlling, and the Council would have the option to either fill the vacancy by appointment or call a special election. This option would allow the seated City Council at the time of the vacancy to determine the appropriateness of either an

appointment or an election based upon the length of the term remaining. The Council would not have the authority to temporarily appoint to fill a vacant Councilmember seat until the date of a special election.

3. Does the City Council want to consider an option that would require a special election be held to fill a city council vacancy and the office of mayor when petitions bearing a specified number of verified signatures are filed?

This is option 36512(c)(2), and a governing body that has enacted such an ordinance may also call a special election pursuant to 36512(b) without waiting for the filing of a petition. If a special election is not called by the City Council pursuant to Section 36512(b), and a qualifying petition is filed to require the election, the election date would be the next regularly established election date not less than 114 days from the filing date of the qualifying petition.

4. Does the City Council want to retain the option in the current MMC Section 2.04.050 that a person appointed to fill a vacancy on the city council holds office only until the date of a special election to fill the remainder of the term?

If this option is to be retained, then the MMC language must be updated to be entirely consistent with current Government Code Section 36512(c)(3). There is no temporary appointment option for the elected office of mayor. A vacancy for the elected office of the mayor would need to be filled consistent with either Section 36512(b) or Section 34902(a) of the Government Code (requiring either appointment or a special election).

In summary, the City Council can have the flexibility to appoint or call a special election to fill a vacancy for an elective office by deleting MMC Section 2.04.050 (this would permit an appointment or calling a special election, but would not permit a temporary appointment until the date of the election); or the City Council may adopt an ordinance requiring an election to fill every city councilmember and office of mayor vacancy (without any appointment), consistent with Government Code Section 36512(c)(1); or the City Council may adopt an ordinance to require a special election be held to fill a city council vacancy and the office of mayor when a qualifying petition is filed, consistent with Government Code Section 36512(c)(2); or the City Council may maintain the general status quo to have an option to make an appointment to fill a city councilmember vacancy until the date of the special election, which must be immediately called, consistent with Government Code Section 36512(c)(3). If MMC Section 2.04.050 is to be retained, the language in this section does need to be made consistent with Government Code Section 36512.

STAFF RECOMMENDATION

Direct staff to draft an ordinance amending Section 2.04.050 of the Municipal Code to be consistent with State law and give direction if any permitted option for the filling of a vacancy is to be included.

Attachments:

- A. Government Code Sections 36512 and 34902
- B. 11/2/11 Agenda Report Item 9.B.

ATTACHMENT A

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.

Government Code Section 34902.

(a) If a majority of the votes cast on the proposition is for it, the office of mayor shall thereafter be an elective office, except as provided in subdivision (b). At the next succeeding general municipal election held in the city, one of the offices of city councilperson, to be filled at the election, shall be designated as the office of mayor, to be filled at the election. The person elected at the election as mayor shall hold office from the Tuesday succeeding his or her election, and until his or her successor is elected and qualifies.

In the case of a vacancy in the office of the mayor for any reason, the council shall fill the vacancy by appointment. If the council fails to fill it within 60 days, it shall call an election to fill the vacancy to be held on the next established election date to

be held not less than 114 days thereafter. A person appointed or elected to fill a vacancy shall hold office for the unexpired term of the former incumbent.

(b) After an office of elective mayor has been established, the city council may subsequently submit to the electors the question of whether or not to eliminate the elective office of mayor, pursuant to the procedures enumerated in this article, and thereby reestablish the procedure of selection of the mayor by the city council. If a majority of the votes cast on the proposition are in favor of the elimination of the office of elective mayor, the office shall be eliminated on the expiration date of the incumbent's term, and on the date the procedure of selection of the mayor by the city council shall be reestablished.

ATTACHMENT B

ITEM 9.B.

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