

## **ITEM 9.A.**

### **MOORPARK CITY COUNCIL AGENDA REPORT**

**TO:** Honorable City Council

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

**BY:** Maureen Benson, City Clerk *mb*

**DATE:** December 16, 2011 (CC Meeting of 1/4/12)

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

#### **BACKGROUND AND DISCUSSION**

As directed by majority vote of the City Council at the December 7, 2011 meeting, attached is a draft ordinance to delete Section 2.04.050, Filling of Vacancies, of Chapter 2.04, City Council, of Title 2 of the Moorpark Municipal Code (MMC). The attached draft ordinance has been reviewed by the City Attorney.

The reasons for deleting Section 2.04.050 were discussed at the December 7 meeting and include:

- Section 36512(b) of the California Government Code sets forth the legal authority to fill a vacancy that occurs in an elective office and provides that 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 must 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 (applies to both a Councilmember and office of Mayor vacancy).
- A vacancy for the elected office of the Mayor would also need to be filled consistent with Section 34902(a) of the Government Code, which is generally consistent with Section 36512(b), requiring either appointment within 60 days or the calling of an election on the next established election date to be held not less than 114 days thereafter.
- A City Council ordinance is not required if Section 36512(b) is to be followed for the filling of a vacancy for an elective office.

#### **FISCAL IMPACT**

There is no fiscal impact for deleting Section 2.040.050 from the MMC other than the printing costs for updating the code, which are budgeted for in the normal course of business.

**STAFF RECOMMENDATION**

Introduce Ordinance No. \_\_\_\_ for first reading, waive full reading, and schedule second reading and adoption for January 18, 2012.

Attachment: Draft Ordinance

**ATTACHMENT 1**

ORDINANCE NO. \_\_\_\_

AN ORDINANCE OF THE CITY OF MOORPARK, CALIFORNIA, DELETING SECTION 2.04.050, FILLING OF VACANCIES, OF CHAPTER 2.04, CITY COUNCIL, OF TITLE 2, ADMINISTRATION AND PERSONNEL, OF THE MOORPARK MUNICIPAL CODE

WHEREAS, Section 2.04.050 of the Moorpark Municipal Code was adopted by Ordinance 77 to establish the requirements for filling a a vacancy on the City Council; and

WHEREAS, the current language of Section 2.04.050 of the Moorpark Municipal Code is not in compliance with the specific wording contained in Section 36512 of the California Government Code, which sets forth the legal authority to fill a vacancy that occurs in an elective office; and

WHEREAS, California Government Code Section 36512(b) provides the authority for a Council to either fill a vacancy in an elective office by appointment or by calling a special election, which allows the decision on the appropriateness of either making an appointment or calling a special election to be made within the established time period following the commencement of the vacancy; and

WHEREAS, California Government Code Section 34902(c) regulates the filling of a vacancy in the office of the Mayor, and is generally consistent with Government Code Section 36512(b); and

WHEREAS, at the regular meeting of December 7, 2011, the City Council determined California Government Code Sections 36512(b) and 34902(c) would be controlling for filling vacancies on the City Council.

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

SECTION 1. That Moorpark Municipal Code Section 2.04.050, Filling of Vacancies, of Chapter 2.04, City Council, is hereby deleted in its entirety.

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 adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted; and shall publish notice of adoption in the manner required by law.

PASSED AND ADOPTED this \_\_\_\_ day of January, 2012.

\_\_\_\_\_  
Janice S. Parvin, Mayor

ATTEST:

\_\_\_\_\_  
Maureen Benson, City Clerk