

TOWN OF FAIRFAX

STAFF REPORT

TO: Mayor, Members of the Town Council **DATE:** March 21, 2013

FROM: Garrett Toy, Town Manager *GT*

SUBJECT: Introduction and First Reading of Ordinance No. 769, An Ordinance of the Town Council of the Town of Fairfax establishing the procedure for replacement of Council Members who resign before the end of the elected term of office

Recommendation

Consider and discuss the attached ordinance and, if appropriate, introduce and read by title only Ordinance No. 769 adding Sections 2.04.020 (Council Vacancies) to the Fairfax Municipal Code and waive further readings of the ordinance.

Discussion

Councilmember O'Neil tendered his resignation effective February 7th from the Town Council because he was moving out of the jurisdiction. This resignation created a vacancy on the Council. The California Election Code requires that the Council, within 60 days, either call for an election to replace Councilmember O'Neil or appoint someone to complete the remainder of his term. At its February 6th meeting, the Council initially decided that it preferred to appoint someone to fill the vacant seat for the remaining term (thru November 2015) and directed staff to advertise for applications for the seat.

At the March 14th Council meeting, staff reported that state law also allows a town to adopt a local ordinance that enables a town council to make appointments for less than the balance of the term of the office for the vacant seat. The appointed person would only fill the vacancy on an interim basis until a special election can be held. This special election would be held on the next regularly established election date which, in this instance, is November 2013. The elected individual would serve the remaining 2 years of the term (until November 2015).

The Council expressed a preference for this approach and requested staff to prepare the ordinance for consideration. Staff was also requested to research two questions:

- Can the two year term be filled by a ranked voting election for all of the open Council seats in an election? In other words, if three 4 year terms and one 2 year term are up for election in November, can the fourth highest vote getter "win" the 2 year term?

Response: This is not permissible under State Law. Council candidates would need to select whether they wanted to run for the 2 year or 4 year term. They cannot run for both. The top vote getter for the 2 year term would win the seat. The top 3 vote getters for the 4 year terms would win the three Council seats up for re-election. Also, current state law does not allow general law cities to adopt ranked choice voting; only charter cities or counties may do so.

AGENDA ITEM # 1

- Can the special election be held on the regularly scheduled town election so as to save the costs of a special election?

Response: Yes, the special election may be held either on the date of the next regularly established election (as set by state law) or on the next regularly scheduled municipal election. The attached ordinance contains this provision.

Should the Council introduce the proposed ordinance at this meeting and adopt the ordinance at the second reading on April 3rd, the ordinance would take effect immediately. After the adoption of the ordinance on April 3rd, the Council would then call for special election for November 5, 2013 to fill the remaining two years of Councilmember O'Neil's vacant seat. The Council would also appoint a replacement to fill the vacancy until the November 2013 election.

If the Council does not introduce the proposed ordinance or adopt the second reading, the Council would either need to fill the vacant seat for the remaining term (until November 2015) or call for a special election, in which case, the seat remains vacant until the election. Due to timing, the special election would occur at the regularly scheduled municipal election in November 2013. The elected candidate would serve the remaining 2 years of the term.

After the proposed ordinance is in place, future Council appointments to fill vacant seats will follow the same procedure set forth in the ordinance.

Fiscal Impact

A special election costs \$8-\$10 per registered voter. The general election costs \$1.75 to \$3.00 per registered voter. Election costs are influenced by the number of jurisdictions sharing the ballot and by the number of contests and measures that a jurisdiction has on the ballot. There probably would be a nominal cost associated with a special election occurring on the regular scheduled municipal election, but it's impossible to estimate. However, it would be significantly lower than a "stand alone" special election (i.e., hundreds of dollars versus tens of thousands).

ORDINANCE NO. _____

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
ADDING SECTION 2.04.020 (COUNCIL VACANCIES)
TO THE FAIRFAX MUNICIPAL CODE**

WHEREAS, subsection (b) of Section 36512 of the California Government Code provides that when a vacancy occurs on a city council, the council may, within sixty days of the occurrence of such vacancy, fill the vacancy by appointment or by calling a special election; and,

WHEREAS, subsection (b) of Section 36512 of the California Government Code provides that the person appointed to fill the vacancy shall hold office for the unexpired term of the former incumbent; and,

WHEREAS, subsection (c)(3) of Section 36512 of the California Government Code provides that, in the alternative, a city may adopt an ordinance that provides that a person appointed to fill a vacant city council seat shall hold office only until the date of a special election, which shall be called to fill the remainder of the term; and,

WHEREAS, the statute further provides that such election shall be held on the date of the next regularly established election or the next regularly scheduled municipal election that is not less than 114 days from the call of such special election; and,

WHEREAS, effective February 7, 2013, Town Council member Ryan O'Neil resigned from the Fairfax Town Council; and,

WHEREAS, at its meeting of March 14, 2013, the Fairfax Town Council reviewed the options for filling Mr. O'Neil's seat; and,

WHEREAS, at the meeting of the Town Council, the Town Council determined it desires to fill a vacant Council seat by appointment only until such time as a special election can be held to fill the seat for the remaining term; and,

WHEREAS, the Town Council therefore desires to adopt an ordinance pursuant to Section 36512(c)(3) of the California Government Code;

NOW, THEREFORE, BE IT ORDAINED that the Town Council of the Town of Fairfax hereby adds section 2.04.020 to the Town of Fairfax Municipal Code as follows:

SECTION 1. Recitals Incorporated. The recitals set forth above are hereby incorporated by reference into this ordinance and made a part hereof.

SECTION 2. Section 2.04.020 is hereby added to the Town of Fairfax Municipal Code with the title "Council Vacancies."

SECTION 3. Section 2.04.020 of the Town of Fairfax Municipal Code reads in full as follows:

AGENDA ITEM # 1

2.04.020 – Council Vacancies.

A. If a vacancy occurs on the Town Council, the Town 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 as provided by subsection (b) of California Government Code section 36512.

B. If the Town Council fills the vacancy by appointment, the person appointed shall hold office only until the date on which the Town holds a special election, which shall immediately be called to fill the remainder of the term as permitted under subsection (c)(3) of California Government Code section 36512. The special election may be held either on the date of the next regularly established election or regularly scheduled municipal election to be held throughout the Town not less than one hundred and fourteen (114) days from the call of the special election, as provided California Government Code section 36512(c)(3).

SECTION 4. Severability. If any section, subsection, phrase, or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 5. Effective Date. This ordinance shall take effect immediately, pursuant to California Government Code section 36937(a).

SECTION 6. Posting. Copies of the foregoing ordinance shall, within fifteen (15) days after its final passage and adoption, be posted in three public places in the Town of Fairfax, to wit:

- a) Bulletin Board, Fairfax Town Offices, Town Hall;
- b) Bulletin Board, Fairfax Post Office; and
- c) Bulletin Board, Fairfax Women’s Club Building,

which said places are hereby designated for that purpose.

THE FOREGOING ORDINANCE was introduced at a meeting of the Fairfax Town Council on the 21st day of March, 2013, and was adopted at a regular meeting of the Town Council on the 3rd day of April, 2013 by the following vote:

AYES:
NOES:
ABSENT:

John Reed, Mayor

ATTEST:

Michele Gardner, Deputy Town Clerk