

**TOWN OF FAIRFAX
STAFF REPORT**

To: Mayor, Members of the Town Council
From: Garrett Toy, Town Manager 
Date: April 3, 2013
Subject: Second Reading of Ordinance 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

1. Waive reading and authorize second reading by Title only.
2. Approve second reading and adopt Ordinance 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.

DISCUSSION

The ordinance was introduced at the March 21, 2013 Special Town Council Meeting. This is the second reading to adopt the ordinance. Should the Council adopt the ordinance at this meeting, the ordinance would take effect immediately.

If the Council does not 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.

ATTACHMENT

Ordinance 769

FISCAL IMPACT

None

ORDINANCE NO. 769

**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:

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).

C. This Section 2.04.020 shall sunset on January 1, 2016 and thereafter shall have no force and effect.

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