



NOTICE OF SPECIAL MEETING

PACIFIC GROVE CITY COUNCIL

Wednesday, September 30, 2009, 6:00 p.m.

City Hall – 300 Forest Avenue - Pacific Grove, CA 93950

AGENDA

1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

2. APPROVAL OF THE AGENDA

3. ORAL COMMUNICATIONS

Comments from the audience will not receive Council action. Comments must deal with matters subject to the jurisdiction of the City and the Council and will be limited to three minutes. Comments regarding agenda items, not on the consent agenda, shall be heard prior to Council's consideration of such items at the time such items are called. Whenever possible, letters should be submitted to the Council in advance of the meeting.

Reference: Mayor Garcia

4. OATH OF OFFICE FOR NEWLY APPOINTED MAYOR

The City Clerk will administer the Oath of Office to Carmelita Garcia, who was appointed Mayor by the City Council at the meeting of September 16, 2009.

Reference: City Clerk James L. Becklenberg

5. APPOINTMENT OF TWO (2) NEW COUNCIL MEMBERS TO VACANT SEATS

Council will interview and receive statements from candidates for two (2) vacant City Council seats with unexpired terms. The Council may then choose to appoint two (2) new members. All candidates have previously submitted applications.

Reference: Mayor Garcia

6. OATH OF OFFICE FOR NEWLY APPOINTED CITY COUNCIL MEMBERS

The City Clerk will administer the Oath of Office to the newly appointed City Council Members.

Reference: City Clerk James L. Becklenberg

7. SELECTION AND APPOINTMENT OF THE MAYOR PRO TEMPORE

Council will consider approval and appointment of the Mayor's recommendation for Mayor Pro Tempore.

Reference: Mayor Garcia

8. ADJOURNMENT

THE CITY OF PACIFIC GROVE DOES NOT DISCRIMINATE AGAINST PERSONS WITH DISABILITIES. CITY HALL IS AN ACCESSIBLE FACILITY. A LIMITED NUMBER OF DEVICES ARE AVAILABLE TO ASSIST THOSE WHO ARE DEAF AND HARD OF HEARING. IF YOU WOULD LIKE TO USE ONE OF THESE DEVICES, PLEASE CONTACT THE DEPUTY CITY CLERK PRIOR TO THE MEETING AT (831) 648-3106.



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: HONORABLE MAYOR GARCIA & MEMBERS OF CITY COUNCIL

FROM: CITY ATTORNEY DAVID C. LAREDO

MEETING DATE: SEPTEMBER 30, 2009

APPOINTMENT OF TWO (2) NEW COUNCIL MEMBERS TO VACANT SEATS

SUBJECT: *Council will interview and receive statements from candidates for two (2) vacant City Council seats. The Council may then choose to fill the two (2) positions by appointment. All candidates have had an opportunity to previously submit applications.*

CEQA THIS DOES NOT CONSTITUTE A "PROJECT" PER CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) GUIDELINES

RECOMMENDATION: The Council should fill the two (2) vacancies caused by the appointment of Mayor Garcia, and by the resignation of Councilmember Stilwell.

DISCUSSION: At its last meeting, Carmelita Garcia was appointed Mayor to succeed Dan Cort, who resigned on September 1, 2009. This appointment created a vacancy in the Council seat previously occupied by Mayor Garcia. Also, Councilmember Stilwell resigned her Council seat by reason of moving out of the area. Accordingly the Council has the opportunity and obligation to appoint two (2) persons to fill these vacancies.

Article 7 of the City Charter provides that to serve as Councilmember, an individual must be "a resident and elector of the City for at least thirty (30) days before the date of his or her election or appointment."

At the last meeting, Council directed staff to provide notice of the two vacancies, and asked persons wanting consideration for appointment to submit application materials to the City Clerk on or before noon, September 28.

The Council also directed candidates to be offered an opportunity at this meeting to make short presentations as to their interest and qualifications, and to respond to questions posed by Council. The order of presentation has been determined by random lot. All meetings pertaining to the two appointments must be in open session.

Charter Article 12 limits the appointment power of the Council to thirty (30) days, "Should the Council fail to fill any such vacancy within thirty days after the same occurs, then it shall be filled by appointment by the Mayor." Therefore, in the event the Council fails to fill either vacancy within that time, that vacancy is then filled by appointment by Mayor Garcia. The last

day for Council to exercise its power of appointment expires on October 16 (as to the seat held by Ms. Garcia) and on October 18 (as to the seat held by Ms. Stilwell).

Appointing Councilmembers

The two (2) vacant Council seats must be filled in accord with Article 12 of the City Charter. In relevant part, Article 12 states,

A vacancy in an elective office shall be filled by appointment by the Council, such appointee to hold office until the next general municipal election and until a successor is elected and qualified.

Therefore, the Council, by four (4) affirmative votes, may select any qualified person to fill each vacant council seat.

As to the term of the Council's appointment, the relevant provision of Article 12 provides: "A vacancy in an elective office shall be filled by appointment by the Council, such ***appointee to hold office until the next general municipal election*** and until a successor is elected and qualified." (Emphasis added.)

This means that each appointed Councilmember shall hold office only until the November, 2010 general municipal election. At that time, each seats will filled by election on the 2010 ballot. This election shall also fill the two other council seats regularly to be filled at that election. Accordingly, three (3) seats at the November, 2010 election will be for full four-year terms, and the other seat up for election will be the unexpired period, a two-year term. This is in accord with Article 12 of the Charter which provides in relevant part,

"Such successor shall be ***elected for the unexpired term of his or her predecessor at the general municipal election*** and until his successor is elected and qualified." (Emphasis added.)

No matter which seat held by an appointee, that person (if he or she wishes to continue in office) will need to declare and run for a council seat at the November, 2010 election. The choice as to which elected seat one should declare for will remain the choice of the candidate, and is to be made at that time. Those declaring for the three (3) open four-year term seats will run as a group... and the three candidates receiving the highest number votes will be elected.

All those declaring for the short term (2 year) seat will run against only those other candidates who choose to compete for that seat. The one candidate receiving the highest number votes will be elected.

All of this means that there is no difference amongst the appointments to be made at this time.

Mechanics of Appointing Two Councilmembers

The Council has options as to how it may wish to proceed:

OPTION A: Determine to fill each Council vacancy as a separate and independent decision.

As to the first vacancy: accept nominations, upon the close of nominations, council members – by roll call – will be asked to cast a single vote by the name of a candidate. This process shall continue until a single candidate receives four (4) affirmative votes. That person shall be deemed appointed to Council under Article 12 of the City Charter.

Then, as to the second vacancy: accept nominations, upon the close of nominations, council members – by roll call – will be asked to cast a single vote by the name of a candidate. This process shall continue until a single candidate receives four (4) affirmative votes. That person shall be deemed appointed to Council under Article 12 of the City Charter.

OPTION B: Consolidate the action to fill the two Council vacancies at the same time.

Accept nominations for both council vacancies at one time; upon the close of nominations, council members – by roll call – will be asked to cast a vote that names two separate candidates. Cumulative voting (i.e., a council member casts two votes for the same candidate) shall *not* be allowed. At any time a single candidate receives four (4) affirmative votes, that person shall be deemed appointed to Council under Article 12 of the City Charter. If votes are thereafter required to fill the remaining vacancy, Council members shall be limited to naming a single candidate for that remaining vacancy.

This process shall continue until each seat is filled by a candidate who has received four (4) affirmative votes. That person shall also be deemed appointed to Council under Article 12 of the City Charter.

Failure to Appoint by Four Votes

Charter Article 12 limits the appointment power of the Council to thirty (30) days. In the event the Council fails to fill either vacancy within that time, that vacancy is then filled by appointment by Mayor Garcia. The last day for Council to exercise its power of appointment as to the first vacancy expires on October 16, and on October 18 as to the second vacancy.

In the event the Council does not fill both vacancies at this meeting, it should determine whether (and if so, when) it wishes to consider this matter at a future time within the time allowed. The Council may also alter the application and interview processes that apply to that decision, provided qualifications and processes set in the Charter are followed.

FISCAL IMPACT: None.

RESPECTFULLY SUBMITTED:

David C. Laredo

David C. Laredo
CITY ATTORNEY