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Staff Report

Date: December 13, 2016

To: City Council

From: Valerie J. Barone, City Manager

Prepared by: Joelle Fockler, MMC, City Clerk
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Subject: **Consideration of an approval process to fill the councilmember vacancy created by the resignation of Councilmember Grayson**

Report in Brief

Due to his election to the State Assembly, Councilmember Grayson resigned from the Concord City Council effective December 2, 2016 at 5 p.m. This announcement requires the City Council to consider the legally available alternatives for filling the vacancy created by Councilmember Grayson to complete his term of office ending December 2018.

Government Code section 36512 allows the City Council 60 days from the commencement of the vacancy to appoint someone to the position. Alternatively, Government Code Section 36512(b) provides that a special election may be called to fill the position.

The City Council has the following options to fill the vacancy:

- 1) Appoint an individual to the vacant position, either through a direct appointment or following an application and interview process; or
- 2) Call for a special election.

Recommended Action

Staff recommends the City Council consider the alternatives and select one by adoption of the related resolution.

If Council decides to call a Special Election, staff requests Council determine if they desire a polling place in Concord or prefer a by-mail election.

Alternative Courses of Action

- Alternative 1: Proceed with appointment of a Councilmember to fill the current vacancy. Adoption of Resolution No. 16-92 (Attachment 1) waives the option of the vacancy being filled by calling a special election when an appointment is made.
- Alternative 2: Adoption of Resolution No. 16-93 (Attachment No. 2) initiating an appointment process, and reserving a final decision on appointment or special election until the Council's regular meeting of January 24, 2017.
- Alternative 3: Adopt Resolution No. 16-94 (Attachment 3) calling for filling of the vacancy by a special election.

Background

The most recent incidence of a mid-term vacancy of a Councilmember in Concord occurred in 2010, with the election of Councilmember Mark Peterson to the position of Contra Costa District Attorney on November 2, 2010, creating a vacancy on the City Council. The procedure adopted by the City Council at that time was to conduct an application and interview process to fill the vacancy by appointment. At the conclusion of the process, Dan Helix was appointed to the City Council to serve the unexpired term

Analysis

The Council has three alternative courses of action to consider:

1. Appoint an individual to the vacant position, either through direct appointment or following an application and interview process.

Under Government Code section 36512(b) if a vacancy occurs affecting the position of an elected councilmember, the council may, within 60 days from the commencement of the vacancy, fill the vacancy by appointment or may call a special election. Adoption of Resolution No. 16-92 (Attachment 1) provides for a Council appointment under this provision, and commits the Council solely to appointment of an eligible individual to fill the vacancy. If the Council exclusively selects the appointment procedure, the Council may choose to a) make a direct appointment of an individual to the vacancy, or b) to consider an application and interview process as detailed under *Appointment Process* below. This latter approach is in keeping with the City's precedent established with the prior mid-term vacancy, and the City's practice of receiving applications and conducting public interviews prior to appointments being made.

There are no significant City costs to this process, and if the proposed schedule (outlined below) is applied to the process, the position could be filled on January 24, 2017.

2. Initiate the process for appointing an individual to the vacant position but leave open the option of calling a special election.

Adoption of Resolution No. 16-93 (Attachment No. 2) initiates the appointment process described in more detail below, but leaves open the option of calling a special election. If the Council is unable to make an appointment to fill a vacancy, it shall call a special election to be held on the next regularly established election date not less than 114 days from the call of the special election.

If the Council appoints an individual to complete the current term, this process will have no significant City costs and the position would be filled on January 24, 2017.

If, however, the Council ultimately decides to call a special election, this process is estimated to cost between \$260,000 – \$325,000. The actual election, whether with a polling place or by mail, would occur on June 6, 2017.

3. Call for filling of the vacancy by a special election.

Government Code 36512(b) provides that a special election to fill the City Council vacancy "...shall be held on the next regularly established election date not less than 114 days from the call of the special election." Adoption of Resolution No. 16-94 (Attachment No. 3) would call for the special election and set the election date for June 6, 2017.

Council needs to direct staff if they want a polling place in Concord or to handle the election by mail.

This option is estimated to cost the City between \$260,000 and \$325,000 for the special election. The actual election, whether with a polling place or by mail, would occur on June 6, 2017.

Appointment Process

The Council may choose to appoint an individual to the vacant position after deliberation and a majority vote of the Council without an application and an interview process. The Council may also employ an application and interview process prior to deliberating and

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selecting someone to fill the vacant position. If the Council desires to call for applications, staff recommends the following schedule and approach:

- a) Announce the application/interview process for filling the vacant position at the December 13, 2016 Council meeting. Open the application process from December 14 – January 13, 2017. To be eligible for appointment applicants must be registered to vote, 18 years of age or older, a U.S. citizen, and a resident of Concord. An applicant would be required to certify he/she meets the eligibility requirements and is willing to serve in the office for the remainder of the term, until November 2018, by signing the application. In addition to the Mayor announcing the recruitment process at the December 13 Council meeting, staff would issue a press release, post the announcement, and make the announcement and application materials available on the City's website.
- b) Candidates would be required to complete and submit to the City Clerk's office an application packet (Attachment 4), including a City application form and a State Fair Political Practices Commission Form 700, Statement of Economic Interests, by 5 p.m. on Friday, January 13, 2017.
- c) Interviews would occur at the City Council's January 24, 2017 public Council meeting. The interviews would be televised. Council could deliberate and appoint directly after completing the interviews.

Financial Impact

An appointment process would not result in any increased fiscal impact beyond assigned staff time. There is not a countywide election scheduled for 2016, and if Council chooses to call a Special Election, it would most likely be a stand-alone election. The City of Concord currently has a registration of 64,726 voters. Contra Costa County has provided an estimate for a stand-alone Polling Place Election at \$5/per registered voter for an estimated total of \$323,630, and between \$3 and \$4 per registered voter for a stand-alone Mail Ballot Election for an estimated total of \$258,904. The Special Election would be paid for from the City's General Fund. The Fiscal Year 2016-17 budget does not currently include funding for a special election.

Public Contact

The City Council Agenda was posted.

Attachments

1. Resolution No. 16-93 – Fill Vacancy by Appointment Waiving Special Election When Appointment is made
2. Resolution No. 16-94 – Fill Vacancy Using an Application Process and Reserving the Use of a Special Election
3. Resolution No. 16-95 – Fill Vacancy by Special Election

**BEFORE THE CITY COUNCIL OF THE CITY OF CONCORD
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA**

**A Resolution of the City Council of the
City of Concord to Appoint a Citizen
to Fill the Office of City Councilmember
Vacated by the Resignation of Timothy S. Grayson
Waiving the Option of a Special Election**

Resolution No.16-93

WHEREAS, City Councilmember Timothy S. Grayson has announced that he will vacate his office effective December 2, 2016 at 5 p.m., prior to the end of his elected term of office, November 2018; and

WHEREAS, in accordance with California Government Code Section 1770, the City Council of the City of Concord now states a vacancy exists effective December 5, 2016; and

WHEREAS, California Government Code 36512 provides for a manner to fill vacancies in General Law cities; and

WHEREAS, in accordance with Government Code Section 36512 the City Council of the City of Concord elects to appoint a Concord resident meeting all eligibility requirements to fulfill the remainder of the term of the vacated office which ends November 2018; and

WHEREAS, the City Council by its election to appoint to fill the vacancy states that it waives the option of a Special Election as allowed by Government Code Section 36512 when the appointment is made.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CONCORD DOES
RESOLVE AS FOLLOWS:**

Section 1. Pursuant to Government Code Section 36512(b), the Concord City Council hereby seeks applications for filling a vacancy by appointment to assure continuity in our local government.

Section 2. That the City Council hereby directs the City Clerk to post a Notice of Intention to Fill a Vacancy for the Concord City Council and to advertise for applications to fill the vacancy and that applications be accepted beginning December 14, 2016, and received no later than January 13,

2017, at 5 p.m. by the City Clerk.

Section 3. That following public interviews of each applicant, the City Council will make an appointment at a public meeting tentatively scheduled for January 24, 2017, but no later than February 1, 2017, by marking of paper ballots which will be recorded by the City Clerk and publicly announced.

Section 4. In the event of a tie, the Council will agree to either reballot until the tie is broken; conduct follow-up interviews of the tied candidates at a public meeting and conduct a reballot; or resolve the tie vote by lot, with the longest lot declared the City Councilmember.

Section 5. The person appointed shall receive the Oath and take office effective immediately and shall serve exactly as if elected at a municipal election for the office.

Section 6. This resolution shall become effective immediately upon its passage and adoption.

PASSED AND ADOPTED by the City Council of the City of Concord on December 13, 2016, by the following vote:

AYES: Councilmembers -

NOES: Councilmembers -

ABSTAIN: Councilmembers -

ABSENT: Councilmembers -

I HEREBY CERTIFY that the foregoing Resolution No. 16-93 was duly and regularly adopted at a regular meeting of the City Council of the City of Concord on December 13, 2016.

Joelle Fockler, MMC
City Clerk

APPROVED AS TO FORM:

Susanne Meyer Brown
City Attorney

**BEFORE THE CITY COUNCIL OF THE CITY OF CONCORD
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA**

**A Resolution Declaring a Vacant Seat
for the Concord City Council, Directing the
City Clerk to Post A Notice of Intention to
Fill a Vacancy for the Concord City Council
And to Advertise for Applications to Fill
The Vacancy**

Resolution No. 16-94

WHEREAS, City Councilmember Timothy S. Grayson has announced that he will vacate his office effective December 2, 2016 at 5 p.m. prior to the end of his elected term of office, November 2018; and

WHEREAS, in accordance with California Government Code Section 1770 the City Council of the City of Concord now states a vacancy exists effective December 5, 2016; and

WHEREAS, California Government Code 36512 provides for a manner to fill vacancies on City Councils of General Law cities; and

WHEREAS, it is the desire of the Concord City Council to consider filling the vacancy through the appointment of an eligible resident of the City of Concord.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CONCORD DOES
RESOLVE AS FOLLOWS:**

Section 1. That the City Council hereby declares that there exists a vacancy for the Concord City Council effective December 5, 2016.

Section 2. That it is in the best interest of the City of Concord to seek applications to consider filling the vacancy by appointment to assure continuity in our local government.

Section 3. That the City Council hereby directs the City Clerk to post a Notice of Intention to Fill a Vacancy for the Concord City Council and to advertise for applications to fill the vacancy and that applications will be accepted between December 14, 2016 and January 13, 2017, at 5 p.m. by the Office of the City Clerk.

Section 4. That the City Council of the City of Concord hereby retains the right to fill the vacancy through the special election process as prescribed by Government Code 36512 even after

1 receiving eligible applications should they so desire without statement of cause or explanation.

2 **Section 5.** That following public interviews of each applicant, should the City Council
3 desire to make an appointment, it will be by marking of paper ballots which will be recorded by the
4 City Clerk and publicly announced at a public meeting tentatively scheduled for January 24, 2017, but
5 no later than February 1, 2017.

6 **Section 6.** In the event of a tie, the Council will agree to either reballot until the tie is
7 broken; conduct follow-up interviews of the tied candidates at a public meeting and conduct a
8 reballot; or resolve the tie vote by lot, with the longest lot declared the City Councilmember.

9 **Section 7.** The person appointed shall receive the Oath and take office effective
10 immediately and shall serve exactly as if elected at a municipal election for the office.

11 **Section 8.** This resolution shall become effective immediately upon its passage and
12 adoption.

13 **PASSED AND ADOPTED** by the City Council of the City of Concord on December 13,
14 2016 by the following vote:

- 15 **AYES:** Councilmembers -
- 16 **NOES:** Councilmembers -
- 17 **ABSTAIN:** Councilmembers -
- 18 **ABSENT:** Councilmembers -

19 **I HEREBY CERTIFY** that the foregoing Resolution No. 16-94 was duly and regularly
20 adopted at a regular meeting of the City Council of the City of Concord on December 13, 2016.

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Joelle Fockler, MMC
City Clerk

24 **APPROVED AS TO FORM:**

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Susanne Meyer Brown
27 City Attorney

**BEFORE THE CITY COUNCIL OF THE CITY OF CONCORD
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA**

**A Resolution Calling For and Giving Notice of a
Special Municipal Election to be Held on
Tuesday, June 6, 2017, for the Election of
Certain Municipal Officers**

Resolution No.16-95

WHEREAS, City Councilmember Timothy S. Grayson has announced that he will vacate his office effective December 2, 2016 at 5 p.m., prior to the end of this elected term of office, November 2018; and

WHEREAS, in accordance with California Government Code Section 1770 the City Council of the City of Concord now states a vacancy exists effective December 5, 2016; and

WHEREAS, California Government Code 36512 provides for a manner to fill vacancies on City Councils of General Law cities; and

WHEREAS, the City Council of the City of Concord has determined, following public deliberation, that the vacancy should be filled by Special Election, in accordance with Government Code 36512 (b) which provides that a vacancy will be filled by appointment or by calling a special election which shall be held on the next regularly established allowable election date not less than 114 days from the call of the special election; and

WHEREAS, there are no countywide consolidated elections scheduled for 2015; and

WHEREAS, the City of Concord must hold a stand-alone election tentatively scheduled for June 6, 2017.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CONCORD DOES
RESOLVE AS FOLLOWS:**

Section 1. Pursuant to the requirements of the laws of the State of California relating to general law cities, there is called and ordered to be held in the City of Concord, on Tuesday, June 7, 2017, a special election for the purpose of electing one (1) City Councilmember for a term ending at the general municipal election held in November 2018.

Section 2. The City Clerk is authorized, instructed and directed to work with the County

1 Elections Department as needed in order to properly and lawfully conduct the election. The ballots to
2 be used in the election shall be in form and content as required by law. The County Elections
3 Department is authorized to canvass the returns of the general municipal election.

4 **Section 3.** The Board of Supervisors is requested to instruct the County Elections Department
5 to provide such services as may be necessary for the holding of the stand-alone election. The City of
6 Concord recognizes that the County will incur additional costs because of this stand-alone election
7 and agrees to reimburse the County for those costs.

8 **Section 4.** The polls for the election shall be open at seven o'clock a.m. on the day of the
9 election and shall remain open continuously from that time until eight o'clock p.m. that same day,
10 when the polls shall be closed, except as provided in Section 14401 of the Elections Code of the State
11 of California. The notice of the time and place of holding the election is hereby given, and the City
12 Clerk is authorized to give further notice of the election, as required by law.

13 **Section 5.** Candidate's Statements will be limited to 300 words and the costs associated with
14 the publication of said statements in appropriate required languages will be collected from the
15 submitting candidate.

16 **Section 6.** In the event two or more candidates receive an equal number of votes, the
17 resolution of a tie vote will be by lot, pursuant to Section 15651 of the Elections Code of the State of
18 California.

19 **Section 7.** The City Clerk is directed to file a certified copy of this resolution with the Contra
20 Costa County Board of Supervisors and the County Election Department.

21 **Section 8.** This resolution shall become effective immediately upon its passage and
22 adoption.

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3 **PASSED AND ADOPTED** by the City Council of the City of Concord on December 13,
4 2016 by the following vote:

5 **AYES:** Councilmembers -

6 **NOES:** Councilmembers -

7 **ABSTAIN:** Councilmembers -

8 **ABSENT:** Councilmembers -

9 **I HEREBY CERTIFY** that the foregoing Resolution No. 16-95 was duly and regularly
10 adopted at a regular meeting of the City Council of the City of Concord on December 13, 2016.

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Joelle Fockler, MMC
City Clerk

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APPROVED AS TO FORM:

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Susanne Meyer Brown
City Attorney

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