



Item No. 18 Town of Atherton

CITY COUNCIL STAFF REPORT – REGULAR AGENDA

**TO: HONORABLE MAYOR AND CITY COUNCIL
GEORGE RODERICKS, CITY MANAGER**

FROM: ANTHONY SUBER, DEPUTY CITY MANAGER / CITY CLERK

DATE: OCTOBER 20, 2021

**SUBJECT: CITY COUNCIL VACANCY APPOINTMENT PROCESS OR ELECTION
PROCESS FOR THE CURRENT CITY COUNCIL VACANCY
INCLUDING THE POSSIBILITY OF IMMEDIATE APPOINTMENT**

RECOMMENDATION

Provide direction with respect to the current City Council vacancy in accordance Atherton Municipal Code Section 2.32.030 addressing options to fill the Council seat vacancy effected by the October 15, 2021, resignation of former Council Member Michael Lempres.

The Council may appoint immediately to fill the vacancy; outline a process to solicit interest and consider appointment to fill the vacancy; or outline a process to call a Special Election to fill the vacancy.

BACKGROUND | ANALYSIS

Council Member Michael Lempres submitted a letter of resignation from Council effective October 15, 2021, due to relocation. In 2013 the City Council was faced with a vacancy on the City Council due to former Council Member Carlson's relocation out of Town. At that time, the City Council was required to comply with Government Code Section 36512(b), which addressed the options available to the City Council to fill a vacancy.

The City Council was again faced with a similar situation due to former Council Member Jim Dobbie's resignation from Council in 2014. As a response to that resignation Council adopted Ordinance No. 603, adding a new section to the Atherton Municipal Code. The adoption of Ordinance No. 603 gave the Council some flexibility with respect to appointing a replacement candidate to fill the unexpired term left by the resignation with an interim member until a special election could be held. With the resignation of former Council Member Michael Lempres, the Council has a few options to consider. Council Member Lempres was appointed to serve a four-year term in November 2018, Resolution No. 19-20. As such, his term expires in November 2022.

Vacancy Ordinance No. 603:

This Ordinance gives the Council the option to appoint a person to fill the vacancy until the date of a special election. In the case of replacing former Council Member Lempres, Council can appoint an interim member until a special election is held (June 2022) instead of appointing to fill the entirety of the unexpired term through November 2022. This election should be held on the next regularly established election date, which is not less than one hundred fourteen (114) days from the call of the special election – anticipated to be June 2022.

Options to Fill Vacancy

If a vacancy occurs in an elective office, the council **shall**, within 60 days from commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy. (Gov. Code § 36512(b)(1).) Sixty days after October 15, 2021, the date of the resignation, is December 14, 2021 (the end of the 60-day window). The Council must decide how to fill the vacancy created by former Council Member Lempres resignation before then.

The options for the process of appointment are listed below.

Option No. 1 – Appoint this Evening

1. Council can discuss and agree on a candidate to appoint to fill the unexpired term until November 2022;

Option No. 2 – Conduct a Process and Appoint to Fill Entire Remaining Term

2. Council can invite candidates to apply, conduct interviews, and agree to appoint a candidate after completing this application process to fill the unexpired term until November 2022.
 - a. Proposed Schedule:
 - Notice to go out – Friday, October 22, 2021.
 - Application cut-off date: Friday, November 12, 2021, by 5:00 PM.
 - Interview of candidates: Potential Special Meeting to be held November 15 or 16 or at the regular meeting on November 17.
 - Appointment and swearing in of the Council Member at the selection meeting with a ceremonial event at the next regular council meeting December 15, 2021.

Option No. 3 – Appoint this Evening or Conduct a Process and Appoint to Fill Short Term

3. Council can discuss and agree on a candidate to appoint to serve until a special election is held, June 2022; or

Option No. 4 – Call a Special Election and Run with 4 Members Until Special Election

4. Council can opt not to appoint a candidate until a special election is held, June 2022.

Appointment Consideration

If the Council elects to conduct a formal recruitment and screening process to solicit candidates, staff suggests preparing a notice for the public to be advertised widely, requesting applications and resumes for consideration. During the screening process, to be held at a special or regularly noticed meeting, candidates would be invited to attend and provided an opportunity to address Council. Council may choose to ask candidates a series of questions, that should be asked consistently.

After each candidate for consideration has been provided that opportunity the Mayor would open the floor for discussion and Council could entertain motions for any candidate's considered appointment. Motions for considered appointment would require a second prior to voting on any particular candidate. Staff suggests that the Council consider putting all candidates on the floor for consideration through a nomination and second process. Once all candidates to be considered are put up through a nomination and second process, the Council would vote on candidates in the order nominated.

Once a candidate receives a majority vote by the Council, that candidate is appointed and no other candidates are considered.

Given the noticing of tonight's item, the City Council can appoint this evening, if desired, continue the discussion, and/or provide direction to staff on a process.

POLICY FOCUS

The recommendations in this report are consistent with Atherton Municipal Code Section 2.32.030.

FISCAL IMPACT

None at this time, should a special election be desired the costs could range from \$15,000 - \$30,000. Staff would enter into an agreement with San Mateo County for election services.

GOAL ALIGNMENT

This report and its contents are in alignment with the following Council Policy Goals:

- Goal E – Strengthen Community Engagement and Transparency
- Goal F – Be Forward-Thinking, Well-Managed, and Well-Planned

PUBLIC NOTICE

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town's electronic News Flash and Atherton Online. There are approximately

1,400 subscribers to the Town’s electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service provides (water, power, and sewer), and regional elected officials.

COMMISSION/COMMITTEE FEEDBACK/REFERRAL

This item ___ has or X has not been before a Town Committee or Commission.

- Audit/Finance Committee (meets every other month)
- Bicycle/Pedestrian Committee (meets as needed)
- Civic Center Advisory Committee (meets as needed)
- Environmental Programs Committee (meets every other month)
- Park and Recreation Committee (meets each month)
- Planning Commission (meets each month)
- Rail Committee (meets every other month)
- Transportation Committee (meets every other month)

ATTACHMENTS

1. Ordinance No. 603

ORDINANCE NO. 603

**AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
ADDING A NEW CHAPTER 2.32.030 TO THE ATHERTON MUNICIPAL CODE
ESTABLISHING REGULATIONS OPTIONS FOR FILLING CITY COUNCIL
VACANCIES BY APPOINTMENT**

The City Council of the Town of Atherton finds as follows:

- A. California Government Code section 36512 provides that, in the event of an unscheduled vacancy on the Town Council, 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 shall be held on the next regularly established election date not less than 114 days from the call of the special election. A person so appointed or elected to fill a vacancy holds office for the unexpired term of the former incumbent.
- B. As an alternative, California Government Code section 36512(c) authorizes the Town to adopt an ordinance that authorizes the Council to appoint an interim Council member to fill an unscheduled vacancy only until the date of the special election in lieu of filling the entire remaining term.
- C. The Council wishes to have the option of appointing an interim member to serve only until the next election, because the Council's current heavy workload requires a five-member Council for satisfactory conduct of the Town's business and because maintaining a four- member Council creates an unacceptable risk of tie votes; the Council still wishes to retain the option of filling the unexpired term of the vacant seat as well.
- D. As an ordinance relating to an election, this ordinance shall take effect immediately upon adoption pursuant to California Government Code Section 36937(a).

Now, therefore, be it ordained by the Council of the Town of Atherton as follows:

Section 2. Adoption of New Section 2.32.030

Section 2.32.030, is hereby added to the Town of Atherton Municipal Code to read as follows:

**“Section 2.32.030 – Option to Appoint Interim Council Member Pending
Special Election.**

- (a) If any vacancy on the Town Council occurs other than by expiration of a term and the Town Council calls a special election to fill said vacancy, the Town

Council may appoint any person, otherwise qualified, to fill said vacancy and hold office only until the date of the special election.

- (b) The special election shall be held on the next regularly established election date not less than one hundred fourteen days from the call of the special election.
- (c). Notwithstanding any other provision of this section, an appointment shall not be made to fill a vacancy on the City Council if the appointment would result in a majority of the members serving on the Council having been appointed.”

Section 3. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The Town Council of the Town of Atherton hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 4. Effective Date; Publication.

This Ordinance shall take effect and be in force upon passage, and before the expiration of fifteen (15) days after passage by the Town Council, a copy of the ordinance shall be published with the names of the members voting for and against it at least once in a newspaper of general circulation in the Town of Atherton.

Introduced this 19th day of March, 2014.

Passed and adopted as an Ordinance of the Town of Atherton at a regular meeting thereof held on the 16th day of April, 2014, by the following vote:

AYES: 4	COUNCILMEMBERS: Wiest, DeGolia, Lewis, Widmer
NOES: 0	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:



Cary Wiest, Mayor

ATTEST:



Theresa DellaSanta, City Clerk

APPROVED AS TO FORM:



William B. Connors, City Attorney