

City of Brisbane

Agenda Report

Date: City Council Meeting of April 2, 2015

To: Mayor & City Council

From: Michael Roush, City Attorney

Subject: Procedures for Making Appointments and Reappointments to Commissions and Committees

Recommendation

Follow the Council adopted procedures concerning appointments to a vacancy on the Planning Commission by requiring interested persons to submit applications but, once the deadline for receiving applications has closed, determine whether the Council will interview all applicants before making an appointment.

Background

The City Council appointed Karen Cunningham to the Planning Commission on March 8, 2010 for a four-year term and then reappointed her on March 3, 2014 for another four-year term. On February 27, 2015 Commissioner Cunningham submitted her resignation from the Commission.

Due to that resignation the Council directed the City Clerk at the City Council Meeting of March 5th to begin the recruitment process for a new commissioner. Subsequently, the City Clerk posted the notice concerning the vacancy and set April 15, 2015 as the deadline for submitting applications. As of the writing of this report, the City Clerk has received one application and has answered several inquiries from members of the community.

On March 18, 2015 Ms. Cunningham requested that she be “reinstated” to the Commission. The City Council has asked whether she could be reinstated to the Commission without the Council's seeking applications from other interested persons and/or whether she could be reappointed without the Council's interviewing all persons who may submit applications.

Discussion

In 2001, the City Council adopted Resolution No. 2001-97 adopting the Brisbane City Council Handbook. In part, it sets forth Procedures for Making Appointments and Reappointments to Commissions & Committees. A copy of that section is attached.

The relevant part provides that vacancies on a commission are to be filled in the same manner as an original appointment. Original appointments are made after persons desiring to be considered for an

appointment to a commission submit an application. Those Procedures, however, do not provide for a process to "reinstate" a commissioner who has resigned.

Moreover, Government Code, sections 54970 through 54974, applicable to general law cities such as Brisbane, sets forth various procedures concerning opportunities for citizens to serve on local advisory commissions and committees. (A copy of those sections is also attached). Government Code section 54974 states that whenever an unscheduled vacancy occurs on a commission due to resignation, the City Clerk shall post a "special notice of vacancy" and the appointing body (here, the City Council) shall not make a final appointment for at least 10 working days after the posting of the notice.

The Council policy references these Government Code sections although the reference to Government Code section 54927 in the last line of the Council policy is a typo; the correct reference is to Section 54972.

Here, due to the resignation of Ms. Cunningham, Government Code section 54972 requires the City Clerk to post a Notice of Vacancy (which she has done). Under the current City Council policy, persons interested in being appointed to the Planning Commission, including Ms. Cunningham, must complete an application seeking appointment.

The Council decision whether to interview applicants is entirely discretionary, although the Council's past practice has been to do so. The deadline for submitting applications is April 15, 2015 and the City Clerk will report to the Council at its April 16th meeting the number of applications that she has received. Council can then decide whether it wants to interview the applicants or make an appointment decision based solely on the applications themselves. In either event, the item would be returned to the Council on a subsequent agenda for action on the appointment itself.



Michael Roush, City Attorney



Clay Holstine, City Manager

COMMISSIONS & COMMITTEES

Procedures for Making Appointments and Reappointments

Any person desiring to be considered for an appointment to any city commission or committee must complete an application indicating on which commission or committee he or she desires to serve.

Any appointees must comply with appropriate provisions of law regarding disclosure of financial interests, if applicable. It is the policy of the City council not to appoint any person to a board or commission who would have continually recurring conflicts of interest requiring abstentions, or an excessively high percentage of such situations.

Vacancies in any board or commission are filled by appointment in the same manner as original appointment. When a vacancy occurs leaving an unexpired portion of the term, any appointment is for the unexpired portion of the term. The Council may remove a commissioner and declare the position vacant if the commissioner misses three consecutive regular meetings or more than one-third of the regular meetings within any twelve month period, or is removed by majority vote of the Council.

Government Code Section 54974 provides that whenever an unscheduled vacancy occurs, a special vacancy notice shall be posted within twenty (20) days after the vacancy occurs and that final appointment to fill such vacancy shall not be made for at least ten (10) working days after such posting. Pursuant to Government Code Section 54927 the City Clerk maintains a list of all board and commission members.

GOVERNMENT CODE

SECTION 54970-54974

54970. (a) The Legislature finds and declares that a vast and largely untapped reservoir of talent exists among the citizenry of the State of California, and that rich and varied segments of this great human resource are, all too frequently, not aware of the many opportunities which exist to participate in and serve on local regulatory and advisory boards, commissions, and committees.

(b) The Legislature further finds and declares that the general public of this state has traditionally been denied access to information regarding vacancies which occur on such boards, commissions, and committees, thereby denying most citizens and interest groups the opportunity to nominate for consideration by the respective appointive powers persons whose particular strengths, backgrounds, experience, perspective, and talents might contribute significantly to efficient and representative policy development and administration in local government.

(c) The Legislature further finds and declares that the respective local appointive powers have been denied access to a talent resource hitherto untapped.

(d) The Legislature further finds and declares that all citizens of the state, regardless of their place of residence should have equal access to specific and current information about the many local regulating and advisory boards, commissions, and committees and equal opportunity to be informed of vacancies which shall occur thereon, so that they may pursue the opportunity to participate in and contribute to the operations of local government by serving on such boards, commissions, and committees.

(e) It is therefore the intent of the Legislature that this chapter shall apply to all cities and all counties throughout California, including charter cities and charter counties.

54971. As used in this chapter:

(a) "Legislative body" means the board of supervisors or its chairman in the case of the county, or the city council or the mayor in the case of a city.

(b) "Local agency" means a county or city, whether chartered or general law.

54972. On or before December 31 of each year, each legislative body shall prepare an appointments list of all regular and ongoing boards, commissions, and committees which are appointed by the legislative body of the local agency. This list shall be known as the Local Appointments List. The list shall contain the following information:

(a) A list of all appointive terms which will expire during the next calendar year, with the name of the incumbent appointee, the date of appointment, the date the term expires, and the necessary qualifications for the position.

(b) A list of all boards, commissions, and committees whose members serve at the pleasure of the legislative body, and the

necessary qualifications for each position.

54973. The Local Appointments List shall be made available to members of the public for a reasonable fee which shall not exceed actual cost. The legislative body shall designate the public library with the largest service population within its jurisdiction to receive a copy of the list.

54974. (a) Whenever an unscheduled vacancy occurs in any board, commission, or committee for which the legislative body has the appointing power, whether due to resignation, death, termination, or other causes, a special vacancy notice shall be posted in the office of the clerk of the local agency, the library designated pursuant to Section 54973, and in other places as directed by the legislative body, not earlier than 20 days before or not later than 20 days after the vacancy occurs. Final appointment to the board, commission, or committee shall not be made by the legislative body for at least 10 working days after the posting of the notice in the clerk's office.

(b) Notwithstanding subdivision (a), the legislative body may, if it finds that an emergency exists, fill the unscheduled vacancy immediately. A person appointed to fill the vacancy shall serve only on an acting basis until the final appointment is made pursuant to this section.
