

# *City of Brisbane*

## *Memo*

**Date:** Meeting of February 4, 2013  
**To:** Honorable Mayor and City Council  
**From:** Sheri Marie Spediacci, City Clerk  
**RE:** Update on City Council Vacancy Options



At the City Council Meeting of January 14<sup>th</sup> the Council discussed the various options for filling the Council vacancy due to the retirement of Sepi Richardson.

The discussion was continued to get a further clarification from legal counsel on the need to make an appointment within the 60 day time frame, which in this case would be by February 27, 2013.

Legal Counsel Valerie Armento, who was filling in for City Attorney Hal Toppel, further researched this matter and has found that the appointment has to be made within the 60 day time frame. I have attached her response.

I have also attached the staff report that was provided at the January meeting for your reference. Hal will be present at this meeting.

---

**From:** Valerie Armento [valeriearmento@yahoo.com]

**Sent:** Tuesday, January 22, 2013 7:38 PM

**To:** Holstine, Clay; Spediacci, Sheri

**Cc:** Toppel.Hal-at-Netgate

**Subject:** Government Code on Vacancy

Clay/Sheri

This is to confirm that the City Council must either appoint someone to fill the vacancy created by the resignation of Vice-Mayor Richardson, or call for an election, within the 60 day time period, since the law uses "shall" in setting forth the available options.

Government Code section 36512(b) states:

36512. (b) If a vacancy occurs in an elective office provided for in this chapter, 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 appointed or elected to fill a vacancy holds office for the unexpired term of the former incumbent.  
Valerie

# City of Brisbane

## Agenda Report

Date: Meeting of January 14, 2013  
To: Mayor & City Council  
From: Sheri Marie Spediacci, City Clerk  
Subject: Discuss options to fill a vacancy on the City Council

### RECOMENDATION

City Council discussion of options to fill the vacancy on the City Council due to the retirement of Mayor Pro Tem Sepi Richardson

### BACKGROUND

Mayor Pro Tem Sepi Richardson has advised the City Council of her retirement from the Council effective December 29, 2012. Her term of office was through December, 2013.

Pursuant to Government Code Section 36512 (b), 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 appointed or elected to fill a vacancy holds office for the unexpired term of the former Councilmember.

Since the Council must decide to appoint or call an election within 60 days from the date of vacancy, the decision must be by February 27<sup>th</sup>.

### ANALYSIS

The purpose of this report is to provide Council an opportunity to begin preliminary discussions of the options available to fill a vacancy on the City Council.

#### If by Election:

The next regularly scheduled election dates are April 2<sup>nd</sup>, June 4<sup>th</sup>, and November 5<sup>th</sup>. I have contacted the County of San Mateo and it is too late to call an election for April 2<sup>nd</sup>.

In order have an election on June 4<sup>th</sup>, the Council would have to adopt a resolution calling the election by February 11<sup>th</sup>. The cost for holding this election would be approximately \$27,000 for an all-mail ballot election or \$41,000 for a regularly conducted election. These costs were not included in the 2012/2013 budget.

If Council decides to call an election between February 12<sup>th</sup> and February 27<sup>th</sup>, the election would then need to be held in November, 2013 because of the “not less than 114 days from call of election” provision in the Government Code Section cited above. Since November 2013 is a regularly scheduled municipal election, there would be no additional cost to the City.

If by Appointment:

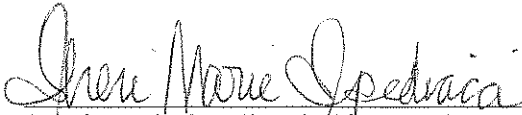
If the City Council determines to appoint someone to fill the vacancy, other than residency and voter registration, there are no criteria or procedures laid out in the Brisbane Municipal Code or the Government Code that must be followed. The Council can appoint someone immediately or determine its own procedure for such an appointment. Again, the Council would have until February 27<sup>th</sup> to make an appointment. Should Council choose to have an application/interview process, the details of that process would need to be decided as soon as possible.

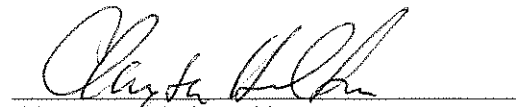
If by Appointment until Special Election:

If the City Council wishes to call an election, but also wishes to appoint someone in the interim, an ordinance would need to be adopted to allow for this. Staff would then bring back at the next City Council Meeting a resolution calling the election, and an ordinance providing for the interim appointment. Council would still need to decide on the process of appointment.

**FISCAL ANALYSIS**

None at this time.

  
\_\_\_\_\_  
Sheri Marie Spediacci, City Clerk

  
\_\_\_\_\_  
Clayton Holstine, City Manager