



# Charter Review Committee

*City of Arts & Innovation*

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**TO: CHARTER REVIEW COMMITTEE MEMBERS      DATE: SEPTEMBER 9, 2019**

**FROM: CITY CLERK      WARDS: ALL**  
**CITY ATTORNEY**

**SUBJECT: CONSIDER PROPOSAL FROM LEAGUE OF WOMEN VOTERS TO  
AMEND CITY CHARTER REVISING APPOINTMENTS TO AND  
ELECTIONS FOR A VACANT SEAT IN AN ELECTED OFFICE**

## **ISSUE:**

Consider the proposal by the League of Women Voters (LWV) for a proposed amendment to City Charter section 404 for appointments to and elections for a vacant seat in an elected office.

## **RECOMMENDATION:**

That the Charter Review Committee determine:

1. Shall City Council appointments to fill vacancies in elected office be permitted?
2. If appointments are allowed, what, if any, is the minimum term remaining to require a special election to fill a vacancy in elected office?
3. Shall runoff election provisions remain when filling a vacancy by special election?
4. Shall appointed officials be permitted to reference "incumbent", "member of the City Council", or other designation indicating incumbency in a future election for the same seat?

## **BACKGROUND:**

### **Current Charter Provision**

Section 404 of the Riverside City Charter specifically addresses vacancies and the process by which a successor is identified for the elected office. Section 404 provides in pertinent part:

#### **Sec. 404. Vacancies.**

A vacancy in an elective office, from whatever cause arising, except in the event of a successful recall, shall be filled by appointment by the City Council, such appointee to hold office until the first Tuesday following the next general municipal election and until his successor qualifies. At the next general municipal election following any vacancy, a successor shall be elected to serve for the remainder of any unexpired term.

. . .

The City Council shall declare the existence of any vacancy. In the event it shall fail to fill a vacancy by appointment within sixty days after such office shall have been so declared vacant, it shall cause an election to be held forthwith to fill such vacancy.

Consequently, the City Council, after declaring a vacancy, has two options in which to fill a vacancy:

1. Within 60 days after declaring a vacancy, appoint a successor who would then hold office until the first Tuesday following the next general municipal election and or subsequent run-off election; or until a successor qualifies. The Charter is silent as to the specific process to be followed for appointment and therefore such a determination would be left to the discretion of the City Council, provided that the appointment is made within 60 days after the office has been declared vacant.
2. Not make an appointment within 60 days of declaring a vacancy but call for an election for that vacant seat. In the event that the City Council fails to fill the vacancy by appointment within 60 days after the office has been formally declared vacant, the City Council would be required to call a special election to be held forthwith to fill the vacancy.

#### Riverside Recent History of Council Replacements

Here is a brief summary of recent vacancies and Council actions beginning in 1990:

1. January to July 1990 – Terry Frizzel elected Mayor on January 9, 1990. Ward 7 seat remained vacant until the election of Laura Pearson on July 24, 1990.
2. January 9, 1993 – John Tavaglione appointed to fill the Ward 4 seat vacated due to the election of Bob Buster to the Board of Supervisors on November 3, 1992. Councilmember Tavaglione held that appointed seat until the election of Maureen Kane on November 2, 1993.
3. January to June 1994 – Ronald Loveridge elected Mayor on January 11, 1994. Ward 1 seat remained vacant until the election of Chuck Beaty on June 7, 1994.
4. January 7, 2013 – Councilmember Rusty Bailey elected Mayor on November 6, 2012. Ken Gutierrez appointed to serve the remainder of the term until the election of Michael Soubirous on November 5, 2013.
5. September 19, 2017 – Steve Adams appointed to fill the Ward 7 seat vacated by Councilmember John Burnard. Councilmember Burnard resigned on August 8, 2017. Councilmember Adams continues to fill that seat pending the election of a new Ward 7 Councilmember on November 5, 2019.

#### League of Women Voters' Proposal

The League of Women Voters (LWV) has proposed an amendment to Section 404. Attached to this report is a letter from the LWV setting forth the reason behind their proposed amendment and a history of Riverside's special elections and/or appointments for the filling of vacancies beginning in 1939. Here is the proposed amendment:

**Sec. 404. Vacancies.**

A vacancy in an elective office, from whatever cause arising, except in the event of a successful recall, shall be filled by a special election in the ward from which such member was elected. ~~shall be filled by appointment by the City Council, such appointee to hold office until the first Tuesday following the next general municipal election and until his successor qualifies. At the next general municipal election following any vacancy, a successor shall be elected to serve for the remainder of any unexpired term.~~

~~...~~  
The City Council shall declare the existence of any vacancy. ~~In the event it shall fail to fill a vacancy by appointment within sixty days after such office shall have been so declared vacant, it shall cause an election to be held forthwith to fill such vacancy and the following procedures shall apply:~~

(a) If the vacancy occurs with one year or less remaining in the term, the City Council may appoint a person to fill the vacant office within thirty days of the office being vacated. Any person appointed by the City Council to fill a vacant office shall not be designated on any ballot or voter pamphlet as an incumbent, a member of the City Council, or other designation indicating incumbency for purposes of the next election for members of the City Council.

In the event that the City Council shall fail to fill a vacancy by appointment within sixty days after such office shall have been so declared vacant, the City Council shall cause an election to be held forthwith to fill such a vacancy.

(b) If the vacancy occurs with more than one year remaining in the term, the City Council shall call a special election to be held within one hundred and twenty days of the vacancy, unless there is a general election scheduled to be held within one hundred and eighty days of the vacancy. If there is a general election scheduled to be held within one hundred and eighty days of the vacancy, the City Council may consolidate the special election with that election. The candidate receiving the greatest votes in said election shall be elected to fill said office.

If approved by voters, Section 404 would read as follows:

**Sec. 404. Vacancies.**

A vacancy in an elective office, from whatever cause arising, except in the event of a successful recall, shall be filled by a special election in the ward from which such member was elected.

~~...~~  
The City Council shall declare the existence of any vacancy and the following procedures shall apply:

(a) If the vacancy occurs with one year or less remaining in the term, the City Council may appoint a person to fill the vacant office within thirty days of the office being vacated. Any person appointed by the City Council to fill a vacant

office shall not be designated on any ballot or voter pamphlet as an incumbent, a member of the City Council, or other designation indicating incumbency for purposes of the next election for members of the City Council. In the event that the City Council shall fail to fill a vacancy by appointment within sixty days after such office shall have been so declared vacant, the City Council shall cause an election to be held forthwith to fill such a vacancy.

(b) If the vacancy occurs with more than one year remaining in the term, the City Council shall call a special election to be held within one hundred and twenty days of the vacancy, unless there is a general election scheduled to be held within one hundred and eighty days of the vacancy. If there is there is a general election scheduled to be held within one hundred and eighty days of the vacancy, the City Council may consolidate the special election with that election. The candidate receiving the greatest votes in said election shall be elected to fill said office.

#### Issues to be Considered by the Charter Review Committee:

The LWV proposal contains specific language requiring a special election to fill vacancies in elected office that exceed one year. Information provided below discusses related law and inconsistencies to be resolved if the Committee wishes to support the LWV proposals.

1. The LWV proposal provides that a vacancy “shall be filled by a special election...”. However the proposal’s next paragraph sets out appointment procedures. The contradictory text should be remedied.
2. In the LWV proposal, a majority vote is not required: “The candidate receiving the greatest votes in said election shall be elected to fill said office.” This proposal conflicts with Charter Section 400 that only candidates receiving a majority of the votes cast shall be declared elected. If no candidate receives such a majority at an election, a subsequent run-off election is held between the two candidates receiving the highest number of votes in the previous election, and the winner of the second election shall be declared elected.
3. The LWV proposes appointment for a vacancy with more than one year remaining. The election process is lengthy. A special election for a vacancy of little more than one year concluding only a few months prior to a regular election will result in overlap with the regular election proceedings causing voter confusion. Below is an example calendar for the calling of an election and a subsequent run-off election:

SAMPLE ELECTION CALENDAR W/ RUNOFF	
WHEN	EVENT
E-130	City Council adopts resolution calling election
E-127 to 113	City Clerk Publishes Notice of Election
E-113	Nomination Period Opens
E-88	Nomination Period Closes
E-83	Extension of Nomination Period Ends
E-0	Election Day
E+ 30	Registrar of Voters Certifies Election Results
E+ 42	City Council Declares Results of Election and Calls Runoff Election
E+ 130	Election Day - Runoff Election
E+ 160	City Council Declares Results of Election and City Clerk Administers Oath of Office
Regular municipal election: 160 days (5.3 months)	
Special runoff election: Additional 118 days (3.9 months)	
Total: 278 days (9.2 months)	

4. The LWV proposal would prohibit an appointed Councilmember from identifying themselves as an incumbent on both the ballot and in a candidate statement. The Charter is currently silent as to the content of a candidate's statement and ballot designation. Elections Code section 13107 prohibits the use of the word "incumbent" as a ballot designation by persons appointed to the office. The Riverside Municipal Code provides the following regarding candidate statements:

1.15.030 - Preparation and form of candidate statement.

A. Each candidate for the office of Mayor or City Council may prepare and submit to the elections official for printing and circulation a candidate's statement on an appropriate form provided by the elections official. The statement may include only the name, age, and occupation of the candidate and a brief description, in no more than 200 words, of the candidate's education and qualifications expressed by the candidate himself or herself. Any candidate statement submitted pursuant to this section shall be limited to a recitation of the candidate's own personal background and qualifications, candidate's qualifications, character or activities. Nor shall the statement include the political party affiliation of the candidate nor membership or activity in any partisan political organization.

B. The elections official shall not cause to be printed or circulated any statement which the elections official determines is not so limited or which includes any materials prohibited by this section. The elections official, in his or her sole discretion, may strike any materials prohibited by the section from a candidate's statement and thereafter cause to be printed and circulated the candidate's statement as redacted.

C. Notwithstanding the 200-word length limitation set forth in paragraph A, by resolution the City Council may authorize an increase in the limitation on words in this statement from 200 to 400 words.

5. The Charter is currently silent as to the appointment process for vacancies. The Committee could consider a process for such appointment.

6. The LWV proposal, for vacancies with one year or less remaining in the term, requires the City Council appoint a replacement within 30 days; if such vacancy is not filled within 60 days, then an election shall be called. The discrepancy in the dates should be clarified. In addition, the Committee should consider whether 30 days is sufficient time for such an appointment given that the City's Sunshine ordinance requires agendas to be published 12 days in advance of a meeting. Reasonable time should also be afforded to advertise the appointment opportunity and for potential candidates to discuss serving in elected office with family members and employers.

**FISCAL IMPACT:**

A special election in lieu of appointment for vacancies on the City Council will incur additional costs. Such costs are estimated to vary from \$60,000 to \$150,000 per special election, depending upon whether the special election is combined with other elections. Attached is a summary of the costs of various elections from January 11, 2000 to the present.

Prepared by: Colleen Nicol, City Clerk  
Susan Wilson, Assistant City Attorney

Approved as to form: Gary G. Geuss, City Attorney

Attachments: League of Women Voters Proposal  
City of Riverside Election Costs