



CITY OF NEWARK

CITY COUNCIL

City Administration Building, City Council Chambers

37101 Newark Boulevard, Newark, CA 94560 | (510) 578-4266 | E-mail: city.clerk@newark.org



AGENDA and NOTICE Special Meeting

Thursday, June 27, 2024
6:30 P.M

A. ROLL CALL

B. CITY MANAGER REPORTS

1. Provide direction regarding how to fill City Council Member vacancy

C. ADJOURNMENT

MEETING INFORMATION

Members of the public may attend the meeting in person, watch online or watch on Cable Channel 26. The ability to observe online or Cable Channel 26 is predicated on those technologies being available and functioning without technical difficulties. Should those platforms not be available, or become non-functioning, or should the City Council otherwise encounter technical difficulties that make those platforms unavailable, the City Council will proceed with business in person unless otherwise prohibited by law.

How to view the meeting remotely:

Livestream online at YouTube <https://www.youtube.com/@cityofnewark3077/streams>

Copy/paste the YouTube URL into your browser if the link does not automatically open.

Cable Channel 26 - if the meeting does not broadcast live, please contact your service provider and request the City of Newark channel lineup.

Zoom will no longer be available for public participation unless required by Assembly Bill 2449. Should a Council Member or the Mayor attend the meeting via Zoom pursuant to Assembly Bill 2249, then the Webinar ID 824 1734 6247 will be activated. The Mayor will make an announcement at the beginning of the meeting that the City will be allowing public comment via Zoom. Raise your virtual hand to notify the City Clerk that you would like to speak during the item that you wish to speak on.

How to submit written Public Comment:

Send an email to City Clerk by 3:00 p.m. the day of the meeting. Please identify the agenda item number in the subject line of your email. Emails will be compiled into one file and will be distributed to the City Council before the meeting.

No question shall be asked of a council member, city staff, or an audience member except through the Mayor. No person shall interrupt the meeting. Any person who refuses to carry out instructions given by the Mayor for the purpose of maintaining order may be guilty of an infraction and may result in removal from the meeting.

Council Meeting Access/Materials:

The agenda packet is available for review at [Agendas and Minutes](#). The packet is typically posted to the City website the Friday before the meeting, but no later than 24 hours before a special meeting.

Pursuant to Government Code 54957.5, supplemental materials distributed less than 72 hours before this meeting, to a majority of the City Council, will be made available for public inspection at this meeting and will be posted at <https://www.newark.org/departments/city-manager-s-office/agendas-minutes> and will concurrently be made available for public inspection during regular business hours at the David W. Smith City Hall, 37101 Newark Boulevard, Newark CA. Materials prepared by City staff and distributed during the meeting are available for public inspection at the meeting or after the meeting if prepared by some other person. Documents related to closed session items or are exempt from disclosure will not be made available for public inspection. For those persons who require special accommodations, please contact the City Clerk at least two days prior to the meeting at [City Clerk](#) or 510-578-4266.



STAFF REPORT

Item B. 1.

DATE 06/27/2024
TO Honorable Mayor and City Council Members
FROM Kristopher Kokotaylo, City Attorney
SUBJECT Provide direction regarding how to fill City Council Member vacancy

SUMMARY AND RECOMMENDATION

Council Member Mike Bucci submitted his resignation to the City Clerk on Wednesday, June 26, 2024, effective Thursday June 27, 2024, at 5 p.m. Staff recommends that the City Council provide direction regarding whether to proceed with a process for the appointment of a Council Member to fill the vacancy and call an election to fill the remainder of the unexpired term on November 5, 2024, or leave the seat vacant and call an election to fill the vacancy.

BACKGROUND

Council Member Mike Bucci submitted his resignation to the City Clerk on Wednesday, June 26, 2024, pursuant to Government Code Section 1770(c)(2) and specified that his resignation was effective Thursday June 27, 2024, at 5 p.m.

Council Member Bucci was first elected to the Newark City Council in November 2014. The City Council appointed him to another four-year term in November 2018 and the voters subsequently elected Council Member Bucci to another four-year term in November 2022. His current term expires in December of 2026.

DISCUSSION/ANALYSIS

Council Member Bucci's resignation leaves the City with a vacancy that must be filled within 60 days, or by no later than August 24, 2024. (Gov. Code Section 36512(b).)

The Government Code requires the City Council to fill the vacancy by either appointment or special election. However, as indicated below, staff recommends that the City Council take action no later than July 15, 2024, or earlier, in order to comply with other requirements of the Government and Elections Code.

Appointment

Pursuant to Government Code Section 36512(b)(2)(A), where a Council vacancy occurs "in the first half of a term of office and at least 130 days prior to the next general municipal election, the person appointed to fill the vacancy shall hold office until the

next general municipal election that is scheduled 130 or more days after the date the council is notified of the vacancy, and thereafter until the person who is elected at that election to fill the vacancy has been qualified. The person elected to fill the vacancy shall hold office for the unexpired balance of the term of office.”

In this instance, Council Member Bucci’s vacancy occurred in the first half of his term of office on June 27, 2024, 131 days prior to the next general municipal election. Thus, if the City Council chooses to appoint someone to fill the vacancy, that person will serve until a person is elected at the November 5, 2024, election and the election results are certified.

Special Election

Pursuant to Government Code Section 36512(b)(1), the City Council may call a special election that “shall be held on the next regularly established election date not less than 114 days from the call of the special election.” If the City Council calls a special election on or before July 15, 2024, it would be consolidated with the general election.

If the City Council calls a special election later than July 15, 2024, it would be scheduled for March 4, 2025. A special election to fill a vacancy in March would cost approximately \$540,000 for placement. The costs for consolidation with the general election would be nominal. In light of these potential costs, staff recommends that the City Council, should it desire to not make an appointment, call a special election before July 15, 2024.

Potential Options for Consideration

Staff is aware of the limited availability of City Council Members during the month of July. Additionally, the City Council is scheduled to have an August recess as it historically has. With Council Member Bucci vacating his seat, the City Council is left with 4 members with intermittent availability. Any action to appoint or call an election will require three affirmative votes.

Additionally, while the Government Code provides that the City Council has 60 days to appoint a City Council Member to fill the vacancy until the next general municipal election on November 5, 2024, this must be considered in conjunction with the timelines established by the Elections Code for consolidation of elections and the nomination period for candidates at the November election. In this instance, Elections Code Section 10403 requires that local elections to fill a City Council seat must be consolidated with statewide elections at least 88 days prior to the date of the election, or August 9, 2024. Further, the nomination period for candidates begins the 113th day, July 15, 2024, and ends the 88th day, August 9, 2024, prior to the election. Thus, any action to appoint should occur by July 15, 2024.

Given the uncertainty of City Council availability and the compressed timeline for action, staff recommends that the City Council consider one of the following three options. The first two options involve appointing someone to fill the vacancy until the election is held and results are certified. The last option includes calling a special election and operating with a four-person Council in the meantime.

1a) Provide Direction to Make an Appointment

State law does not require any formal appointment process. The City Council could discuss potential appointees and make an appointment without soliciting applications. A draft resolution is attached. Should the City Council choose this option, staff recommends that the City Council provide direction regarding a future date no earlier than July 1, 2024, for formal action on the appointment. If the City Council identifies potential candidates, the City Clerk will confirm their eligibility for office in advance of the potential meeting for appointment. In order to be eligible, prospective appointees must be: (1) At least 18 years old; (2) Registered to vote in the City of Newark; (3) Live in the City of Newark; and (4) Must not be convicted of a crime that revokes privileges to run for elected office.

1b) Establish a Process for Accepting Applications and Making an Appointment

The City Council may establish any procedure that it wishes to seek applicants for appointment such as the procedure utilized by the City to fill past vacancies. The City Council may direct staff to prepare an application process and set deadlines established by the City Council. Attached is a draft application similar to one previously used to fill City Council vacancies.

In light of the considerations related to timing for the upcoming general election as identified above, should the City Council desire to solicit applications and conduct interviews, then staff proposes the following timeline:

June 28 (8 a.m.) – July 7, 2024 (5 p.m.): Application window open.

July 8, 2024: City Council Special Meeting to conduct interviews, make an appointment and adopt a resolution calling an election on November 5, 2024, to fill remainder of the vacancy.

While the Government Code provides 60 days until the City Council is required to make a decision, in light of the pending November general election and the consequences of failing to take action at least 114 days prior to the November general action, staff recommends that any decision to make an appointment occur by July 8, 2024. While this is earlier than the July 15, 2024, date identified above, this appears to be the final date when the City Council is likely to have four (4) of its members available to participate in the appointment process.

Should the City Council be unable to make an appointment before July 15, 2024, the Council would need to call a special election for March 2025 at a significant cost to the City. This is complicated by the fact that should the City Council desire to consolidate the election for this Council seat with the general election, it would need to be done at least 88 days prior to November 5, 2024, on August 9, 2024. Finally, the nomination period for City Council seats for the November 5, 2024, election is from July 15, 2024, through August 9, 2024 (extended an additional five days to August 14, 2024, where an incumbent elects not to run). Thus, any action should occur prior to July 15, 2024. For the above reasons, should the City Council desire to have an application and interview process, staff recommends utilizing the timeline outlined above to ensure

compliance with all necessary Government Code and Elections Code timelines.

2) Call a Special Election

As noted above, the City Council can leave the seat vacant and call a special election. Should the City Council call the special election before July 15, 2024, it would be held on November 5, 2024, at the next general municipal election. The person elected would hold office for the unexpired term of the City Council seat vacated by Councilmember Bucci (through December 2026).

FISCAL IMPACT

There is no fiscal impact associated with this action. If the City Council chooses to call a special election later than July 15, 2024, the cost would be approximately \$540,000.

REVIEW AND APPROVAL

Prepared by - Kristopher J. Kokotaylo, City Attorney

Reviewed by - Sheila Harrington, City Clerk

Reviewed by - Lenka Hovorka, Assistant City Manager

Approved by - David J. Benoun, City Manager

Attachments

Resolution

Draft Application

Presentation

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK APPOINTING _____ TO FILL THE
VACANCY ON THE CITY COUNCIL

WHEREAS, having been duly elected on November 8, 2022, Council Member Mike Bucci tendered his resignation from the City Council effective June 27, 2024; and

WHEREAS, pursuant to Government Code Section 36512(b), a vacancy in the office of a Council Member may be filled by appointment by the Council within sixty days after its existence; and

WHEREAS, pursuant to Government Code Section 36512(b)(2)(A), because the vacancy occurred in the first half of the term of office and at least 130 days prior to the next general municipal election, any person appointed to fill the vacancy shall hold office until the next general municipal election and until a successor is elected and qualified, and any unexpired remainder of the term of such office shall be filled by the voters at such election; and

WHEREAS, at a meeting of the City Council on [insert], 2024, the City Council voted to appoint [insert] to the City Council; and

WHEREAS, [insert] is a qualified individual within the meaning of Government Code Section 36502 and Elections Code Section 321 and is eligible to fill the vacancy.

NOW THEREFORE, BE IT RESOLVED that [insert] is hereby appointed to the City Council to fill the City Council vacancy caused by the resignation of Council Member Mike Bucci until a successor is elected and the November 5, 2024 election results are certified.



APPLICATION AND STATEMENT OF QUALIFICATIONS FOR APPOINTMENT TO THE NEWARK CITY COUNCIL

Must be a Newark resident and registered voter at time application is filed.

Applicant's Name: _____, _____, _____
(Last) (First) (MI)

Address: _____, Newark, CA 94560

Telephone: () _____ Email Address _____

Occupation: _____

This Statement must be signed and received by the City Clerk, no later than 5:00 p.m. on Sunday, July 7, 2024. Email submittals will be accepted to sheila.harrington@newark.org, by the deadline, with the statement signed by hand and attached in a pdf format. Applications may also be hand delivered to the City Clerk at 37101 Newark Boulevard, 2nd Floor during regular business hours through July 3; City Hall will be closed July 4-7. Applicants are advised that information provided in this Statement and attachments will become part of the public record.

Please provide a typewritten statement of no more than 200 words per numbered category, addressing the following: (1) why you want to be appointed to the Newark City Council; (2) familiarity with City of Newark's organization and projects; (3) current and prior governmental, political, occupational, community service, or volunteer experience; (4) applicable education; and (5) your view of the City's budgetary priorities.

☐ Check here if your Statement continues on another page.

☐ Check here if Resume is attached. (optional)

Do you intend to seek Election to the Council in the November 2024 Election?

☐ Yes

☐ No

☐ Undecided

My signature on this application affirms that I am a resident of the City of Newark and a registered voter as of the date of my signature.

Applicant's Signature: _____ Date: _____



City of Newark

Memorandum

DATE: June 27, 2024

TO: City Council

CC: City Manager, Assistant City Manager, City Attorney

FROM: Sheila Harrington, City Clerk *SH*

SUBJECT: B.1 Provide direction regarding how to fill City Council Member vacancy, Special City Council meeting

Attached is a presentation for the June 27, 2024, Special City Council meeting. This was not included in the packet that was distributed yesterday. Paper copies will also be at your seats at the dias.



Direction Regarding City Council Vacancy

June 27, 2024



City Council Options

- Initial Decision:
 1. Leave seat vacant and call election.
 2. Appoint individual to fill vacated seat until election.



Option 1

- Leave seat vacant:
 1. Call election prior to July 15, 2024, for November 5, 2024.
 2. Call election after July 15, 2024, for March 4, 2025.
- Person elected would serve until December 2026.



Option 2

- Appoint qualified individual to serve until successor is elected and certified at November 5, 2024, election.
- Appointment must occur before July 15, 2024, in order to comply with Elections Code timelines.
- July 8, 2024, apparent final date all Council available prior to July 15, 2024.



Option 2 – Appoint Without Application Process

- Engage in discussion and provide direction to staff for potential appointment without application process.
- Appointment should occur by July 8, 2024.



Option 2 – Appoint With Application Process

- Establish process for solicitation of applications, coordinating interviews and appointment.
- Suggested timeline:
 - June 28 (8 a.m.) – July 7, 2024 (5 p.m.): Application window open.
 - July 8, 2024: City Council Special Meeting to conduct interviews, make an appointment and adopt a resolution calling election.



Summary of Process for Consideration

- Make an Appointment? Yes/No.
 1. No – call election November 2024 or March 2025.
 2. Yes.
 - Appoint without application process by July 8, 2024.
 - Establish application process and appoint by July 8, 2024.