

TOWN OF SAN ANSELMO
STAFF REPORT
March 5, 2013

For the Meeting of March 12, 2013

TO: Town Council

FROM: Debbie Stutsman, Town Manager
Megan H. Acevedo, Deputy Town Attorney

SUBJECT: Introducing an Ordinance to Establish Procedures for Filling Town Council Vacancies

RECOMMENDATION:

Staff recommends that the Town Council introduce and read by title only Ordinance ___ adding section 2-1.03 (Council Vacancies) to the San Anselmo Municipal Code and waive further readings of the ordinance.

BACKGROUND:

Council member Lori Lopin resigned from the Town Council effective February 25, 2013. At the Town Council meeting of February 26, 2013, the Town Council discussed options for filling her vacant seat. The Council directed staff to return with an ordinance that would permit the Council to appoint a person to fill the vacancy until November 2013, when a special election will be held to fill the seat for the remaining two years of Ms. Lopin's term. The proposed ordinance is consistent with that direction and with state law.

DISCUSSION:

State law generally requires a city council to fill vacancies either by appointment within sixty days or by calling for a special election. (Cal. Gov. Code § 36512(b)). In either case, the person appointed or elected serves out the balance of the resigning member's term of office. (Cal. Gov. Code § 36512(a)).

However, state law also allows a city to adopt a local ordinance that enables a city council to make appointments for less than the balance of the term of office for the vacant seat. Government Code Section 36512(c)(3) provides that a city may enact an ordinance which:

Provides that a person appointed to fill a vacancy on the city council holds office only until the date of a special election which shall immediately be called to fill the remainder of the term. The special election may be held on the date of the next regularly established election or regularly scheduled municipal election to be held throughout the city not less than 114 days from the call of the special election. (Cal. Gov. Code § 36512(c)(3)).

When a city council adopts such an ordinance, it becomes effective immediately. (Cal. Gov. Code § 36937(a)).

At its February 26, 2013 meeting, the Town Council directed staff to prepare an ordinance to implement the option provided by Government Code 36512 (c)(3). Accordingly, the proposed ordinance allows the Town Council to appoint a member to fill a vacant Council seat only until such time as a special election is held to fill the seat for the remainder of the term.

If the Council introduces the proposed ordinance at its meeting on March 12, 2013, and adopts the ordinance on March 26, 2013, the ordinance will take effect on that date. The Council can then call a special election for November 5, 2013, to fill the remaining two years of Ms. Lopin's seat. The Council will also appoint a person to fill the vacancy until the November 5, 2013, election.

After the proposed ordinance is in place, future Council appointments to fill vacant seats will follow the same procedure set forth in the ordinance. In addition, the proposed ordinance will be automatically amended if any amendments are made to subsections (b) and (c)(3) of section 36512 of the California Government Code.

Conclusion

Staff respectfully requests that the Town Council introduce and read by title only Ordinance ___ adopting San Anselmo Municipal Code section 2-1.03 (Council Vacancies) and waive further readings of the ordinance.

Respectfully submitted,

Handwritten signature in blue ink that reads "M. Acevedo" followed by a stylized flourish that looks like "OS".

Megan Acevedo
Deputy Town Attorney

Exhibit A – Proposed Ordinance

ORDINANCE NO. ____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO ADDING SECTION 2-1.03 (COUNCIL VACANCIES) TO THE SAN ANSELMO MUNICIPAL CODE

WHEREAS, Subsection (b) of Section 36512 of the California Government Code provides that when a vacancy occurs on a city council, the council may, within sixty days of the occurrence of such vacancy, fill the vacancy by appointment or by calling a special election; and,

WHEREAS, Subsection (b) of Section 36512 of the California Government Code provides that the person appointed to fill the vacancy shall hold office for the unexpired term of the former incumbent; and,

WHEREAS, Subsection (c)(3) of Section 36512 of the California Government Code provides that, in the alternative, a city may adopt an ordinance that provides that a person appointed to fill a vacant city council seat shall hold office only until the date of a special election, which shall be called to fill the remainder of the term; and,

WHEREAS, the statute further provides that such election shall be held on the date of the next regularly-established election or regularly-scheduled municipal election that is not less than 114 days from the call of such special election; and,

WHEREAS, effective February 25, 2013, Town Council member Lori Lopin resigned from the San Anselmo Town Council; and,

WHEREAS, at its meeting of February 26, 2013, the San Anselmo Town Council reviewed the options for filling Ms. Lopin's seat; and,

WHEREAS, at the meeting the Town Council determined the Town Council desires to fill a vacant Council seat by appointment only until such time as a special election can be held to fill the seat for the remaining term; and,

WHEREAS, the Town Council therefore desires to adopt an ordinance pursuant to subsection (c)(3) of the California Government Code;

NOW, THEREFORE, BE IT ORDAINED that the Town Council of the Town of San Anselmo hereby adds section 2-1.03 to the Town of San Anselmo Municipal Code as follows:

SECTION 1. Recitals incorporated. The recitals set forth above are hereby incorporated by reference into this ordinance and made a part hereof.

SECTION 2. Section 2-1.03 is hereby added to the Town of San Anselmo Municipal Code with the title "Council Vacancies".

SECTION 3. Section 2-1.03 of the Town of San Anselmo Municipal Code reads in full as follows:

2-1.03 – Council Vacancies.

A. If a vacancy occurs on the Town Council, the Town Council shall, within sixty (60) days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy as provided by subsection (b) of California Government Code section 36512.

B. If the Town Council fills the vacancy by appointment, the person appointed shall hold office only until the date on which the Town holds a special election, which shall immediately be called to fill the remainder of the term as permitted under subsection (c)(3) of California Government Code section 36512. The special election may be held either on the date of the next regularly established election or regularly scheduled municipal election to be held throughout the Town not less than one hundred and fourteen (114) days from the call of the special election, as provided by subsection (c)(3) of California Government Code section 36512.

C. Amendments to Government Code section 36512 subsections (b) and (c)(3) are hereby automatically incorporated into this section.

SECTION 4. Severability. If any section, subsection, phrase, or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 5. Effective Date. This ordinance shall take effect immediately, pursuant to California Government Code section 36937(a).

SECTION 6. Publication. This ordinance shall be published in accordance with the provisions of Government Code Section 36933.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the San Anselmo Town Council on the 12th day of March, 2013 and was adopted at a regular meeting of the Town Council on the ___ day of _____, 2013 by the following vote:

AYES:

NOES:

ABSENT:

Kay Coleman, Mayor

ATTEST:

Barbara Chambers, Town Clerk