



# Special Meeting A G E N D A

**IMPERIAL BEACH CITY COUNCIL  
REDEVELOPMENT AGENCY  
PLANNING COMMISSION  
PUBLIC FINANCING AUTHORITY**



**MAY 27, 2009 – 6:00 P.M.**

**Council Chambers  
825 Imperial Beach Boulevard  
Imperial Beach, CA 91932**

**THE CITY COUNCIL ALSO SITS AS THE CITY OF IMPERIAL BEACH REDEVELOPMENT AGENCY, PLANNING COMMISSION, AND PUBLIC FINANCING AUTHORITY.**

The City of Imperial Beach is endeavoring to be in total compliance with the Americans with Disabilities Act (ADA). If you require assistance or auxiliary aids in order to participate at City Council meetings, please contact the City Clerk's Office at (619) 423-8301, as far in advance of the meeting as possible.

## **CALL TO ORDER BY MAYOR**

## **ROLL CALL BY CITY CLERK**

**PUBLIC COMMENT** - *Each person wishing to address the City Council regarding items not on the posted agenda may do so at this time. In accordance with State law, Council may not take action on an item not scheduled on the agenda. If appropriate, the item will be referred to the City Manager or placed on a future agenda.*

## **REPORTS**

### **1. FILING A VACANT COUNCIL POSITION. (0430-05)**

City Manager's Recommendation:

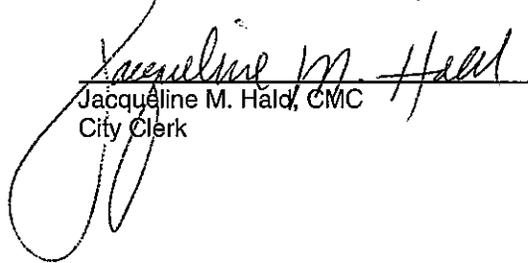
1. Discuss the process and options available to fill a Council vacancy.
2. Decide whether to appoint someone or call for a special election. I recommend appointing someone.
3. Decide whether you want an appointed person to fill the remainder of Mr. McLean's term (until December 2012) or until after the next regular Council election in November, 2010 at which voters can select a person to fill the remainder of Mr. McLean's term, as well as a Mayor and two other Council Members.
4. Decide the process by which to solicit, review and appoint a person. I recommend using a process similar to that used to fill vacancies on boards and commissions:
  - a. Advertise the vacancy in the Union Tribune and Eagle Times. We'll also get the word out through the media, local organizations, and our website. Applications are to be submitted no later than June 4<sup>th</sup>.
  - b. Disseminate all applications to Council no later than June 8<sup>th</sup>.
  - c. Review Mayor's recommendation to Council at a special meeting no later than June 17<sup>th</sup>.
  - d. Council discusses applications and the Mayor's recommendation, and selects a person to fill the vacancy. This can be done at the meeting mentioned in c, above, or a special meeting no later than June 23<sup>rd</sup>.
5. If Council prefers to call for a special election rather than make an appointment, I believe the November 3, 2009 election would be the date.

**Any writings or documents provided to a majority of the City Council/RDA/Planning Commission/Public Financing Authority regarding any item on this agenda will be made available for public inspection in the office of the City Clerk located at 825 Imperial Beach Blvd., Imperial Beach, CA 91932 during normal business hours.**

**ADJOURNMENT**

Copies of this notice were provided on 05-26-09 to the San Diego Union-Tribune, I.B. Eagle & Times, I.B. Sun.  
AFFIDAVIT OF POSTING)  
STATE OF CALIFORNIA)  
CITY OF IMPERIAL BEACH)

I, Jacqueline M. Hald, City Clerk of the City of Imperial Beach, hereby certify that the Agenda for the Special Meeting as called by the Mayor of Imperial Beach was provided and posted on May 26, 2009. Said meeting to be held at 6:00 p.m., May 27, 2009, in the Council Chambers, 825 Imperial Beach Boulevard, Imperial Beach, California. Said notice was posted at the entrance to the City Council Chambers on May 26, 2009 at 5:00 p.m.

  
Jacqueline M. Hald, CMC  
City Clerk

**Any writings or documents provided to a majority of the City Council/RDA/Planning Commission/Public Financing Authority regarding any item on this agenda will be made available for public inspection in the office of the City Clerk located at 825 Imperial Beach Blvd., Imperial Beach, CA 91932 during normal business hours.**



**STAFF REPORT  
CITY OF IMPERIAL BEACH**

**TO:** HONORABLE MAYOR AND CITY COUNCIL  
**FROM:** GARY BROWN, CITY MANAGER  
**MEETING DATE:** May 27, 2009  
**ORIGINATING DEPT.:** OFFICE OF THE CITY MANAGER  
**SUBJECT:** FILLING A VACANT COUNCIL POSITION

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**BACKGROUND:**

Regrettably, due to Councilmember McLean's death, Council will meet this Wednesday, May 26<sup>th</sup>, at 6:00 p.m. to discuss filling his position.

Attached are a Memo from Attorney Lisa Foster, a summary of the law, and the state law that governs filling a Council vacancy.

Given that Council must either appoint somebody or decide to have special election by June 23, (30 days from the date of Mr. McLean's death), I've taken the liberty of asking the City Clerk to place a notice of vacancy, copy attached, in the "Eagle & Times" and UT asking people interested in filling the position to apply no later than Thursday, June 4<sup>th</sup>. If Council decides not to appoint somebody, we'll simply tell people that no appointment will be made. Also attached is a draft application form.

You have a basic decision to make: Do you want to appoint somebody to fill the vacant Council position or call a special election to fill the vacancy. (See Section 36512 (b) and the following paragraphs in the State law, copy attached). Council can appoint someone to fill the remainder of Mr. McLean's term. If Council decides to fill the position for a period less than the remainder of Mr. McLean's term you'll need to pass an ordinance that states the special election at which people will run to fill the position, either November 3, 2009 or the Council Election in 2010.

If Council decides to hold a special election rather than appoint someone it will be on the "next regularly established election date not less than 114 days from the call of the special election." We believe that would be November 3, 2009. A downside to a special election is the cost, estimated by the Registrar of Voters to be \$135,000. (We were told a special election in Poway would have cost \$250,000.) Ms. Hald is trying to get a cost estimate from the registrar of voters.

Within the law Council has discretion on the process by which you solicit, review, and appoint someone.

**ENVIRONMENTAL ANALYSIS:**

Not a project as defined by CEQA.

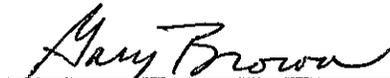
**FISCAL IMPACT:**

Costly fiscal impact for special election.

**CITY MANAGER'S RECOMMENDATION:**

1. Discuss the process and options available to fill a Council vacancy.
2. Decide whether to appoint someone or call for a special election. I recommend appointing someone.
3. Decide whether you want an appointed person to fill the remainder of Mr. McLean's term (until December 2012) or until after the next regular Council election in November, 2010 at which voters can select a person to fill the remainder of Mr. McLean's term, as well as a Mayor and two other Council Members.
4. Decide the process by which to solicit, review and appoint a person. I recommend using a process similar to that used to fill vacancies on boards and commissions:
  - a. Advertise the vacancy in the Union Tribune and Eagle Times. We'll also get the word out through the media, local organizations, and our website. Applications are to be submitted no later than June 4<sup>th</sup>.
  - b. Disseminate all applications to Council no later than June 8<sup>th</sup>.
  - c. Review Mayor's recommendation to Council at a special meeting no later than June 17<sup>th</sup>.
  - d. Council discusses applications and the Mayor's recommendation, and selects a person to fill the vacancy. This can be done at the meeting mentioned in C, above, or a special meeting no later than June 23<sup>rd</sup>.
5. If Council prefers to call for a special election rather than make an appointment, I believe the November 3, 2009 election would be the date.

Please review the attachments and forgive me the haste in which I wrote this memo.

  
\_\_\_\_\_  
Gary Brown, City Manager

**Attachments:**

1. Memo from Attorney Lisa Foster
2. Summary of the Law
3. State law that governs filling a Council vacancy
4. Notice of Vacancy
5. Draft Application
6. 2009 Calendar

# City of Imperial Beach

## MEMORANDUM

To: Honorable Mayor and City Council  
Gary Brown, City Manager

From: Lisa A. Foster, Deputy City Attorney

Date: May 26, 2009

Subject: General Information about Councilmember  
Succession Planning

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A City Council vacancy has been created by the death of Councilmember Fred McLean, which occurred on May 24, 2009. The purpose of this memorandum is to provide you with general information on the subject of Councilmember vacancies and the process for filling such vacancies.

### 1. How does a vacancy occur?

A vacancy in an elective office can occur in a number of ways, including death of the incumbent, adjudication that the incumbent is incapacitated and cannot perform the duties, resignation, or the incumbent ceasing to be an inhabitant of the city. Gov't Code section 1770. In order for a resignation to be effective, it must be in writing and filed with the city clerk. Gov't Code section 1750(e). The resignation takes effect by its terms. It need not be "accepted" by anyone to be effective.

### 2. What council must do in response to a vacancy?

Within 30 days of a vacancy, the city council must fill the vacancy by appointment or by calling a special election to be held on the next established election date not later than 114 days thereafter. Gov't Code section 36512; 34902(a). The successor serves from the date of appointment or the Tuesday following the election, until the expiration of the predecessor's term.

In general law cities, the city council has broad discretion to choose the method for filling the vacancy, and the process to be used is not related to the amount of time left in the incumbent's term.

### 3. Who is eligible to fill a vacancy?

In order to be eligible to hold a municipal office, a person must be a resident of the city and a registered voter of the city. Gov't Code sections 34882, 34904.

A city council cannot appoint one of its own incumbent members to fill a council vacancy. Government Code section 1752(a) provides, "no person elected or appointed

to the governing body of any city, county, or district having an elected governing body, shall be appointed to fill any vacancy on such governing body during the term for which he or she was elected or appointed." The only exception to that rule allows a councilmember to fill the position of elected mayor in a general law city. Gov't Code section 1752(b).

4. What is the process for filling a vacancy?

The process for filling a vacancy, which applies to both the mayor and councilmembers, is set forth in Government Code section 36512.

Section 36512 does not contain a detailed process, but instead gives the city council discretion to choose either appointment or special election, (or a combination of both) and provides a 30-day deadline for making that decision from the time of the vacancy. Section 36512 also specifies that if a special election is chosen, the special election must be held not less than 114 days from the call for the special election.

Section 36512(c)(3) allows the city council the choice of a combination of appointment and special election to fill a vacancy. That section provides that a city may appoint a person to fill a council vacancy only until the date of a special election, which shall immediately be called to fill the remainder of the term. The special election must be held at the next regularly established election or regularly scheduled municipal election, not less than 114 days from the call of the special election. Please note that this action must be taken by ordinance. As an ordinance pertaining to elections, it would take effect immediately and would not require a second reading. Gov't Code section 36937.

In those cities using an appointment process, the most common practice is to direct the city clerk to put out an announcement to the public that the position will be filled by appointment, and inviting interested persons to apply for the position. A public hearing is then held where the applicants have a chance to give a statement or answer the council's questions, and a series of votes are taken in open session until a majority of councilmembers agree on the appointment. In some cities, a council subcommittee has been used to narrow the field of applicants to the most qualified, and only the "shortlisted" applicants are considered at the public hearing.

6. How many votes are required to take action to fill a mayor or councilmember vacancy?

The decision to make an appointment or to call a special election to fill a vacancy requires three votes. IBMC section 2.12.100(C) provides that all actions pertaining to elections must be adopted by a majority vote of the full City Council.

7. If a majority of the City Council cannot agree on an appointment, will this automatically mean that there will be a special election?

No. A special election does not occur by default, but will occur only if there is a majority vote of the city council approving a special election, and approving the required ordinances and/or resolutions to call the election and to request the County to conduct the election.

May 26, 2009

Page 3

8. Can the matter of filling a mayor or councilmember vacancy be discussed in closed session?

No. There is currently no authority in the Brown Act that would allow holding a closed session on the subject of filling a mayor or councilmember vacancy. Although closed sessions are allowed regarding the appointment or evaluation of a public employee, pursuant to Gov't Code section 54957, for purposes of that section "employee" does not include any elected official or member of the legislative body. Gov't Code section 54957.

I hope that this has been helpful. Please feel free to contact me if you have any questions.



## VACANCIES

ATTACHMENT 2

When a vacancy occurs in an elective office in a general law city or a charter city which follows the general law on vacancies, Government Code § 36512 allows the City Council 30 days from the commencement of the vacancy to appoint someone to the position. For purposes of determining the 30-day deadline, commencement of the vacancy occurs when the Council receives notice of the vacancy at a council meeting. *In the case of the death of an elected official, the office becomes vacant upon the death of the official. (G.C. 1770a).*

The council may not make an appointment to fill a vacancy on the city council if the appointment would result in a majority of the members serving on the council having been appointed. In that case the council must call an election to fill the vacancy.

**Election date:** If the council is unable to make an appointment to fill a vacancy in an elective office, it shall call a special election. 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. Election Code § 1000 establishes the following regularly established election dates:

- a. The second Tuesday of April of each even-numbered year.
- b. The first Tuesday after the first Monday in March of each odd-numbered year.
- c. The first Tuesday after the first Monday in June of each year.
- d. The first Tuesday after the first Monday in November of each year.
- e. **The first Tuesday in February of each year evenly divisible by the number four.**

A person appointed or elected to fill a vacancy holds office for the unexpired term of the former incumbent.

The Government Code would require the council to call the election before the 30-day period expires. Since the election must be held on a specified election day, calling the election after the close of the 30-day period but prior to the 114<sup>th</sup> day before the election would *usually* have the same effect as calling the election within the 30-day period. Once called, the timing and mechanics of an election to fill a vacancy vary little, if any, from a General Municipal Election.

The council has three alternative procedures it may follow to fill a vacancy.

1. First, it may enact an ordinance which requires that a special election be called immediately to fill any vacancy *on the city council* or in the office of *elective mayor* designated pursuant to Government Code § 34902. The ordinance shall provide that 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.

2. Second, it may enact an ordinance which requires that a special election be held to fill any vacancy *on the city council* or in the office of *elective mayor* when petitions bearing a specified number of verified signatures are filed. The ordinance shall provide that the special election be held on the next regularly established election date not less than 114 days from the filing of the petition. A governing body which has enacted such an ordinance may also call a special election without waiting for the filing of a petition.

3. Third, it may provide that a person appointed to fill any vacancy *on the city council* (it does not include the office of elective mayor) 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.

If your city is a charter city, check your charter first for vacancy provisions.

Note: Section 34902 refers to the office of Mayor as an elective position, and filling of vacancies is the same as above.

*Sections referenced above:*

EC:	GC:	34902
1000	1770	36512



36512. (a) If a vacancy occurs in an appointive office provided for in this chapter, the council shall fill the vacancy by appointment. A person appointed to fill a vacancy holds office for the unexpired term of the former incumbent.

(b) If a vacancy occurs in an elective office provided for in this chapter, the council shall, within 30 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.

(c) Notwithstanding subdivision (b) and Section 34902, a city may enact an ordinance which:

(1) Requires that a special election be called immediately to fill every city council vacancy and the office of mayor designated pursuant to Section 34902. The ordinance shall provide that 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.

(2) Requires that a special election be held to fill a city council vacancy and the office of mayor designated pursuant to Section 34902 when petitions bearing a specified number of verified signatures are filed. The ordinance shall provide that the special election shall be held on the next regularly established election date not less than 114 days from the filing of the petition. A governing body which has enacted such an ordinance may also call a special election pursuant to subdivision (b) without waiting for the filing of a petition.

(3) 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.

(d) (1) Notwithstanding subdivision (b) and Section 34902, an appointment shall not be made to fill a vacancy on a city council if the appointment would result in a majority of the members serving on the council having been appointed. The vacancy shall be filled in the manner provided by this subdivision.

(2) The city council may call an election to fill the vacancy, to be held on the next regularly established election date not less than 114 days after the call.

(3) If the city council does not call an election pursuant to paragraph (2), the vacancy shall be filled at the next regularly established election date.

34902. (a) If a majority of the votes cast on the proposition is for it, the office of mayor shall thereafter be an elective office, except as provided in subdivision (b). At the next succeeding general municipal election held in the city one of the offices of city councilperson, to be filled at the election, shall be designated as the office of mayor, to be filled at the election. The person elected at the election as mayor shall hold office from the Tuesday succeeding his or her election, and until his or her successor is elected and qualifies.

In the case of a vacancy in the office of the mayor for any reason, the council shall fill the vacancy by appointment. If the council fails to fill it within 30 days, it shall call an election to fill the vacancy to be held on the next established election date to be held not less than 114 days thereafter. A person appointed or elected to fill a vacancy shall hold office for the unexpired term of the former incumbent. (b) After an office of elective mayor has been established, the city council may subsequently submit to the electors the question of whether or not to eliminate the elective office of mayor, pursuant to the procedures enumerated in this article, and thereby reestablish the procedure of selection of the mayor by the city council. If a majority of the votes cast on the proposition are in favor of the elimination of the office of elective mayor, the office shall be eliminated on the expiration date of the incumbent's term, and on the date the procedure of selection of the mayor by the city council shall be reestablished.

*The City Of  
Imperial  
Beach*

(619) 423-8301  
FAX: (619) 628-1395

OFFICE OF THE CITY CLERK  
825 IMPERIAL BEACH BOULEVARD • IMPERIAL BEACH, CALIFORNIA 91932



**NOTICE OF VACANCY  
ON THE CITY COUNCIL OF THE  
CITY OF IMPERIAL BEACH**

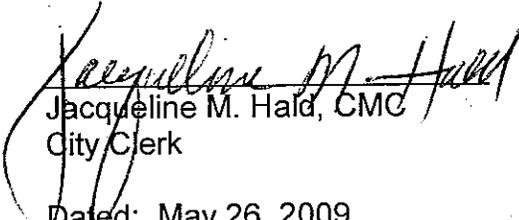
NOTICE IS HEREBY GIVEN that the Imperial Beach City Council will be accepting applications to fill the City Council vacancy created by the death of Councilmember Fred McLean.

Applicants must be at least 18 years of age, reside within the City of Imperial Beach and be registered to vote in the City of Imperial Beach at the time the application is submitted.

Interested applicants must complete an application form which is available from the Office of the City Clerk, City Hall, 825 Imperial Beach Blvd., or on the City's web page at [www.cityofib.com](http://www.cityofib.com).

The City Clerk's office is open Monday through Friday, 7:30 a.m. to 5:30 p.m. **All completed applications must be filed in the Office of the City Clerk no later than 5:30 p.m., on Thursday, June 4, 2009.**

For further information, contact the City Clerk's Office at (619) 423-8616.

  
Jacqueline M. Hald, CMC  
City Clerk

Dated: May 26, 2009

To be Posted & Published: May 28, 2009





**Application for Appointment to Fill Vacancy  
IMPERIAL BEACH CITY COUNCIL  
DEADLINE DATE: THURSDAY, JUNE 4, 2009 AT 5:30 P.M.**

Resident of Imperial Beach:	Yes ___	No ___
Number of Years Resided in Imperial Beach	___	
Registered Voter:	Yes ___	No ___

Name: \_\_\_\_\_

Home Address: \_\_\_\_\_  
Street City Zip

Home Phone: ( ) \_\_\_\_\_ Work: ( ) \_\_\_\_\_ Cell: ( ) \_\_\_\_\_

*Please feel free to attach any additional information which may be of use to the City Council for determination of appointment.*

**Employment Information**

ORGANIZATION \_\_\_\_\_

Address \_\_\_\_\_

Position \_\_\_\_\_ Dates \_\_\_\_\_

Responsibilities \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

ORGANIZATION \_\_\_\_\_

Address \_\_\_\_\_

Position \_\_\_\_\_ Dates \_\_\_\_\_

Responsibilities \_\_\_\_\_

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ORGANIZATION \_\_\_\_\_

Address \_\_\_\_\_

Position \_\_\_\_\_ Dates \_\_\_\_\_

Responsibilities \_\_\_\_\_

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2009

CITY OF IMPERIAL BEACH

2009

825 Imperial Beach Boulevard  
Imperial Beach, CA 91932

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-  Council Meetings
-  Quarterly Council Workshops
-  City Hall Closed
-  City Holidays

**SPECIAL EVENTS**

Sandcastle  
IB Birthday  
League Conference

July 17-19, 2009  
July 18, 2009  
September 16-19, 2009