



Memorandum

TO: MAYOR AND CITY COUNCIL

FROM: Councilmember Sam Liccardo

SUBJECT: SEE BELOW

DATE: December 15, 2014

APPROVED: Sam Liccardo (P.P.)

SUBJECT: INTERIM APPOINTMENT TO VACANT DISTRICT 4 SEAT

RECOMMENDATION:

Defer the hearing and consideration of an interim appointment of a Council District 4 representative until Friday, December 19th. Direct the City Clerk to continue to accept applications for appointment until Thursday, 5 pm, and to publicize this information through local media.

DISCUSSION:

I request that we extend the application window an additional three days, and set this public hearing for Friday, just before the holiday break.

Some of my Council colleagues have asked for more time, and we can accommodate those requests. However, the public would benefit from a more complete chronology of events than one finds in either of their memoranda.

On November 12th of this year, City Clerk Toni Taber filed a public memorandum, specifically identifying the three options authorized by Section 404 of the Charter for filling the District 4 Councilmember vacancy for the next two years: Council appointment, special election, and/or interim appointment. That information was related in local media, including the November 29th issue of the *San Jose Mercury News*. A public hearing was set for December 2, 2014 for Council consideration of these options.

At that December 2nd Council meeting, I made a motion to schedule a special election in April 2015, with a runoff election in June. By setting a special election, rather than appointing a successor to Councilmember Kansen Chu, we ensured that the residents of District 4 would have their say about their own representation.

At that same December 2nd hearing, I further moved that we set a future date for a public hearing for the appointment of an interim councilmember, as provided in the City Charter. Several of us agreed that given the duration of the election process, 8 months was too long for the district's residents to go without representation, and an interim appointment would enable a member to weigh in on votes critical to the district, and enable a full Council to do the City's work.

At that December 2nd hearing, Councilmembers Kalra, Rocha, and Campos objected, asserting that the setting of a hearing date for an interim appointment would somehow facilitate the selection of an interim appointee who could also be a candidate for that seat in the 2015 election. Asserting that my proposal to set a hearing date constituted an “exercise” to give a favored (yet unnamed) candidate “an unfair advantage” in that election, those councilmembers declined to approve the mere setting of a date for a public hearing in this matter. As Councilmember Campos asserted, “...let's be real. Whoever gets appointed is going to run for that seat.” I responded that I'd amend the motion to ensure that a candidate for interim appointment “cannot be an individual who will subsequently submit their name for nomination for the election,” but that did not appear to assuage the suspicions of my colleagues.

Ironically, because two councilmembers were absent from Council at that December 2nd, the Council lacked the votes to perform the very straightforward task of setting a public hearing date to more fully consider this issue of an interim appointment. It is also not without irony that the very councilmembers who objected to setting that hearing date—one which would have provided ample notice to the public—are the same councilmembers who now protest about the “rushed” process in this instance.

As a result, on December 5th, Mayor Chuck Reed and I filed a memorandum to ask the Rules Committee to set that hearing date on December 16th to consider the appointment of someone who would not run in District 4. The Rules Committee heard that proposal at its next-scheduled meeting, on December 10th.

I am not a member of the Rules Committee, and was not present at that committee hearing. I subsequently learned that an abbreviated application period was established by the City Clerk, with applications to be accepted on December 11th, with the window closing the following day. Upon learning of this, I called Clerk Taber, and requested a longer duration for acceptance of applications. Clerk Taber graciously agreed, and publicly noticed (and communicated to local media) that applications would be accepted until the following Tuesday, December 16th, at 9 am.

That same day, on December 12th, I filed a memorandum with Mayor Chuck Reed, recommending the interim appointment of former Councilmember Margie Matthews, who had twice previously been elected to represent District 4, but will not seek election in 2015. I filed that memorandum after calling several community leaders to vet the selection, and virtually all agreed that Ms. Matthews' exemplary prior service, and her absence of any personal political ambition, made her a logical choice for interim appointment.

Nonetheless, this process may not have allowed ample time for members of the public to learn of this opportunity, and to apply. For that reason, I suggest a deferral of this item for several additional days.

I do not support waiting until 2015 to conduct this appointment process, however. First, there will be many issues needing attention in the District, and it will take time for any applicant to get “up to speed.” A December appointment, with the holiday recess, provides the interim appointee the ability to hit the ground running in January for what will be a short stint—lasting perhaps through August.

Second, by proceeding this year, the public has the benefit of this decision being made by experienced councilmembers who have grappled with the complex issues in District 4 for the last 8 years (or 14 years, in Mayor Reed's case), such as North San Jose housing development, the transportation funding shortfall, or the disposition of buffer lands for the sewage plant. The existing Councilmembers have had some experience with this type of process and community members in District 4, and can assess their relative qualifications or impact in the community. Just as VTA Chairperson Ash Kalra's own VTA Board selected its leadership for next year with a soon-departing cadre of board members only a week ago, so there is a benefit of relying upon the experience of this Council.

Undoubtedly, there are other mechanisms that could provide for even more public input and process. Detractors will find fault in any of those processes, however, since they fall short in comparison to the most democratic of procedures: an election. We've scheduled an election, and the residents of District 4 will be able to choose their representative. In the meantime, the City Charter authorizes the Council's selection of an interim appointee to perform the work of the City. We should move forward.