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OFFICE OF THE
CITY CLERK

VALERIE A. BURROWES, CMC/AAE
CITY CLERK

VIRGINIA K. HENRY, CMC/AAE
ASSISTANT CITY CLERK

CITY OF SACRAMENTO
CALIFORNIA

November 24, 1999

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City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: A RESOLUTION INTERPRETING AND APPLYING SECTION 46 OF THE SACRAMENTO CITY CHARTER AND AUTHORIZING THE VACANCY IN OFFICE OF MAYOR TO BE FILLED BY APPOINTMENT BY A MAJORITY OF MEMBERS OF THE CITY COUNCIL THEN IN OFFICE

LOCATION/COUNCIL DISTRICT: Citywide

RECOMMENDATION:

This report recommends that the City Council approve the attached resolution, which is consistent with, and reflective of, the action taken by Council on November 16, 1999.

CONTACT PERSON: Valerie Burrowes, City Clerk (264-5799)

FOR COUNCIL MEETING OF: November 30, 1999

SUMMARY:

On November 16, 1999, the City Council considered the issue of whether the Charter required the vacancy in the Mayoral position to be filled by appointment or a special election. By a 5-3 vote, the Council determined that a special election was not required, and that the Mayoral position could be filled by appointment, pursuant to Section 46 of the Charter.

The action of the Council on November 16 was taken pursuant to a motion by Councilmember Jones, seconded by Councilmember Pannell. While grounds supporting the motion were read into the record, no resolution was presented or adopted.

The attached resolution is consistent with, and reflective of, the action taken by the Council on November 16, and the grounds for taking such action as stated on the record.

COMMITTEE/COMMISSION ACTION

None.

BACKGROUND INFORMATION:

Following the death of Mayor Joe Serna, Jr. on November 7, 1999, the Council was faced with the issue of how to fill the vacancy in the Mayoral position. Section 46 of the Charter provides that the vacancy is to be filled by special election, unless the vacancy occurs within one year of the next general election, in which case the vacancy may be filled by appointment by the remaining members of the Council. On November 16, 1999, the Council determined that the vacancy occasioned by Mayor Serna's death occurred within one year of the next general election, and that the position could therefore be filled by appointment.

FINANCIAL CONSIDERATIONS:

None.

ENVIRONMENTAL CONSIDERATIONS:

The action is not a project within the meaning of CEQA.

POLICY CONSIDERATIONS:

The Charter provides for a special election to fill a vacancy in the Mayoral position, unless the vacancy occurs within one year of the next general election, in which case the position may be filled by appointment by the remaining members of the Council.

ESBD CONSIDERATIONS:

City Council adoption of the attached resolution is not affected by City policy related to the ESBD program.

Respectfully submitted,


VALERIE BURROWES
City Clerk

RECOMMENDATION APPROVED:


ROBERT P. THOMAS
City Manager

RESOLUTION NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____



A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SACRAMENTO INTERPRETING AND APPLYING SECTION 46 OF THE SACRAMENTO CITY CHARTER AND AUTHORIZING THE VACANCY IN OFFICE OF MAYOR TO BE FILLED BY APPOINTMENT BY A MAJORITY OF MEMBERS OF THE CITY COUNCIL THEN IN OFFICE

WHEREAS, a vacancy occurred in the office of mayor on November 7, 1999, with the death of Mayor Joe Serna, Jr.; and

WHEREAS, Section 46 of the Sacramento City Charter provides, in part, that a vacancy in the office of the mayor shall be filled by special election to be called by the city council unless such vacancy occurs within one year of the next general election at which the office of mayor would normally be filled, in which case the vacancy shall be filled by appointment by a majority of the members of the city council then in office; and

WHEREAS, the next general election at which the office of mayor would normally be filled is November 7, 2000; and

WHEREAS, the decision to call a special election for the office of mayor or fill the office of mayor by appointment of the members of the city council then in office depends upon the meaning of the words "within" and "one year" recognizing that the year 2000 is a leap year; and

WHEREAS, although the city attorney has rendered his opinion that a special election will be necessary, the city attorney at the same time has also advised the members of the City Council that arguments could be made on both sides of the issue and they would seem to have equal support, and that the members of the City Council have the ultimate responsibility for determining what the language of the City Charter means; and

WHEREAS, the City Council is required to interpret and apply the provisions of Section 46 of the City Charter in light of its practical application under the circumstances; and

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RESOLUTION NO. _____

DATE ADOPTED: _____

WHEREAS, in undertaking its responsibility to interpret and apply the City Charter, the members of the City Council are taking into consideration the following principles:

(1) that the City Charter operates not as a grant of power, but as an instrument of limitation and restriction on the exercise of power over all municipal affairs which the City is assumed to possess; and that the City has all powers over municipal affairs, otherwise lawfully exercised, subject only to the clear and explicit limitation and restrictions contained in the City Charter; and that City Charter provisions are construed in favor of the exercise of power over municipal affairs and against the existence of any limitation or restriction thereon which is not expressly stated in the City Charter; thus, restrictions on a charter city's power may not be implied (*Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 170-171); and

(2) that all laws bearing on a subject must be read together, in construing the City Charter; statutes relating to the subject matter will be read into the City Charter, so as to become part of it (*McQuillan, Municipal Corporation*, Vol. 2A, Section 9.23, p. 235); and

(3) a contemporaneous practical construction of a charter provision will be given due weight by a court in construing and applying the provision, but a practical construction will not be permitted to change the true meaning and intent of the words used (*McQuillan, Municipal Corporation*, Vol. 2A, Section 9.23, p. 236); and

WHEREAS, California law predating the City Charter [of long standing from a "very early date in this state" (see *Scoville v. Anderson* (1901) 131 Cal. 590, 594)], now contained in Government Code Section 6800 (based on former Political Code Section 12, enacted in 1872), Civil Code Section 10, and Code of Civil Procedure Section 12, among other provisions, has established a uniform method of measuring time periods, including time periods described as "within" a year, by specifying that the time in which any act is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday and then it is also excluded; and

WHEREAS, Government Code Section 6803 provides that a year means a period of 365 days and that the added day of a leap year, and the day immediately preceding, if they occur in any such period, shall be reckoned together as one day; and

WHEREAS, the general rule of computation of time has been applied in interpreting the provisions of a city charter consistent with the policy that the gravest considerations of public order and security require that the method of computing time be definite and certain (*Ley v. Dominguez* (1931) 212 Cal. 587, 594); and

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WHEREAS, Section 10 of the City Charter provides that where the general laws of the State provide a procedure for the carrying out of any rights or powers belonging to the City, said procedure may be followed unless a different procedure is provided or required by the City Charter, ordinance or resolution (see *City of San Jose v. Lynch* (1935) 4 Cal.2d 760); and

WHEREAS, Section 155 of the City Charter provides that, unless otherwise provided by City ordinance, all City elections shall be held in accordance with provisions of the Elections Code and the Government Code of the State of California; and

WHEREAS, Section 46 of the City Charter does not reveal an intent to provide for a different method of computation of time than the general rule customarily followed in California; and

WHEREAS, the case of *Wixted v. Fletcher* (1961) 192 Cal.App.2d 706, cited by the city attorney, also states "There are already enough legal subtleties without adding the further refinement that one rule of time computation must be applied to certain statutes of limitation and still another to procedural situations" (*Id.* at p. 709);

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Sacramento, that the members of the City Council hereby determine, based on the foregoing recitals, independent legal analysis provided, and the independent authority of the members of the City Council to interpret the City Charter, that the death of Mayor Joe Serna, Jr., on November 7, 1999, occurred within one year of the next general election at which the office of mayor would normally be filled, and that, pursuant to Section 46 of the City Charter, the vacancy in the office of mayor shall be filled by appointment by a majority of the members of the City Council currently in office.

PASSED AND ADOPTED this _____ day of November, 1999.

Acting Mayor of the
City of Sacramento

ATTEST:

CITY CLERK

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DATE ADOPTED: _____