

JUNE LAGMAY  
CITY CLERK

# CITY OF LOS ANGELES

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CITY CLERK

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ANTONIO R. VILLARAIGOSA  
MAYOR

November 7, 2012

Honorable Members of the Los Angeles City Council  
c/o City Clerk, Room 395 City Hall  
Los Angeles, CA 90012

**Re: Options to Fill Vacancy in Council District 6**

Honorable Members:

This report discusses the options available to the City Council to fill the anticipated vacancy in the Office of the City Council, 6<sup>th</sup> District. The Los Angeles County Clerk/Registrar-Recorder is currently canvassing the results of the November 6, 2012 election for the 29<sup>th</sup> Congressional District in which current Councilmember Tony Cardenas ran as a candidate. There may ensue a vacancy in the Office of the City Council, 6<sup>th</sup> District should Councilmember Tony Cardenas be certified as the winner in that Congressional race and upon tendering his resignation from the City Council.

The Council has two options: it may exercise its authority under Charter Section 409 to fill a vacancy in a Council District seat by either 1) appointment, or 2) Special Election.

Appointment - Charter Section 409(a)

The Council has the authority to make an appointment to fill a vacancy once the vacancy exists. The person to be appointed must meet the eligibility requirements set forth in Charter Section 407 which requires the person to be a registered voter of the Council District at the time of appointment and be a resident of the Council District at least 30 days prior to appointment.

This long-term appointment would last for that portion of Mr. Cardenas' term remaining through June 30, 2015. Since in this case the time remaining in Mr. Cardenas' term is more than two years till the next regular election, the time served by an appointee through June 30, 2015 would be counted toward the maximum term limit upon that office (three terms maximum). For your information, under Charter Section 409(c), any person appointed to the Council seat under this option would be subject to recall as if they had been elected to office by the residents of the 6<sup>th</sup> Council District.

The Council has not opted to exercise its authority to make a long-term appointment to fill a vacancy since the mid-1960s when former Councilmember John Ferraro was appointed to fill a vacancy. The Council has usually opted to call a Special Election.

The appointment option would fill the vacancy more rapidly than a Special Election, would avoid the cost of conducting a Special Election and reduce the number of times voters in this District will have to vote in the space of six months (the November 2012 Presidential Election, the March 5, 2013 City Primary and the May 21, 2013 City General). However, the argument against the appointment option is that the voters of the 6<sup>th</sup> Council District should have the right to choose their City Council representative.

#### Special Election - Charter Section 409(b)

The City Council may alternatively choose to call a Special Election to fill the vacancy. If the Council chooses this option and adopts an Ordinance to call a Special Election, we have attached a Special Election schedule with a **Special CD6 primary election date of May 21, 2013 - concurrent with the City's General Election, with a runoff, if necessary on July 23, 2013**. These are the earliest dates a Special Election can be called to minimize the time the 6<sup>th</sup> Council District would be without representation on the Council while still providing reasonable notice for prospective candidates to meet election residency requirements and organize their campaigns, minimizing risk of legal challenges to the proposed election schedule, providing adequate time for this Office to prepare for the election, and avoiding holidays which may hinder voter turnout.

In anticipation of the Council considering the Special Election option, the City Attorney has reiterated his longstanding opinion concerning adoption of a Special Election Ordinance prior to the date of the vacancy. The City Attorney has indicated that legal risks in calling a Special Election prior to the actual vacancy may be minimized if the following conditions are met:

- A resignation letter from Councilmember Cardenas identifying a future date certain of his resignation should be filed with the City Clerk prior to the Council adopting the Special Election Ordinance;
- None of the actual election processes should commence before the actual vacancy exists;
- No less than a 30-day period should be established between the adoption of the Special Election Ordinance and the first day to file a Declaration of Intention (DOI) to become a candidate, in order to allow candidates the opportunity to meet the 30-day residency requirement;
- The Special Election Ordinance should include a clause that makes the Ordinance null and void if the office is not vacated as planned; and
- Councilmember Cardenas (and any Councilmember who will not be part of the City Council when the vacancy actually arises) should not participate in any Council action related to calling the Special Election.

Assuming the Council adopts an ordinance **by December 14, 2012** calling for a Special Election to fill the prospective vacancy, the Special Election schedule contains the following major key deadline dates:

<u>Election Activity</u>	<u>Date</u>
Council adopts ordinance calling for a Special Election	December 14, 2012
Residency start	January 5, 2013*
Declaration of Intention	
First day to file	February 4, 2013
Last day to file	February 9, 2013
Nominating Petitions	
First day to issue	February 4, 2013
First day to file	February 9, 2013
Last day to file	February 25, 2013
Special Election, Primary	<b>May 21, 2013</b>
Special Election, runoff (if necessary)	<b>July 23, 2013</b>

\*Charter Section 407(a) requires that a candidate be a registered voter of the District at the time of his or her nomination of election and have been a resident of the District at least 30 days immediately preceding the first day upon which candidates can file a Declaration of Intention to run for office.

#### Department Requirements

The cost of conducting a single-district Special Election in Council District 6 is estimated at approximately \$400,000. This amount reflects significant savings as we intend to run the Special CD6 primary on the same day as the City's general municipal election on May 21, 2013, with a standalone runoff, if required, in July 2013. For comparison purposes, the City Clerk requested an appropriation of \$1.5 million to run the 2011 completely standalone Special Election to fill the vacancy in Council District 15.

The \$400,000 cost is based upon the number of precincts in CD6 and presumes an estimated 15 to 20 candidates filing papers to run, normal at-poll voting methodology, and the necessity of administering both the primary and runoff elections.

As funding for a Special Council District election was not provided in the City Clerk's 2012-13 Budget, funding would need to be appropriated to the City Clerk to cover the cost of this Special Election. Further, in order to properly conduct this Special Election, the City Clerk's Office would require exemption from the Managed Hiring Process in 2012-13 and 2013-14 for all election and systems staff required to administer the Special Election.

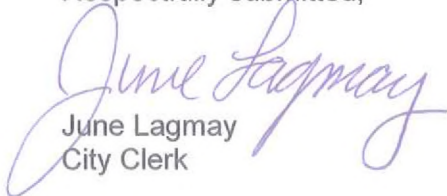
Recommendations for Council action:

1. Request the City Attorney to prepare and present an Election Ordinance that calls for and provides for a Special Election to fill the vacancy in the Office of Member of the Council, 6<sup>th</sup> District, utilizing the dates listed above, in order to allow for Council adoption of the Ordinance by December 14, 2012.
2. Appropriate \$400,000 from funding source to be identified, to the City Clerk Fund No. 100/40 as follows:
  - \$221,000 to Account 1070 (Salaries As-Needed)
  - \$ 18,000 to Account 1090 (Salaries Overtime)
  - \$161,000 to Account 4170 (Election Expense)
3. Authorize the City Clerk, in conjunction with the CAO and the Controller, to make any technical corrections or clarifications to the above fund transfer instruction in order to effectuate the intent of this action.
4. Authorize the City Clerk to negotiate and execute any agreements, as appropriate, as may be needed relative to the Council District 6 Special Election, subject to the approval of the City Attorney as to form and legality.
5. Exempt from the Managed Hiring Process in 2012-13 and 2013-14 all election and systems staff required to administer the Special Election.

Fiscal Impact Statement

The estimated cost of conducting a single-district Special Election in Council District 6 would be approximately \$400,000 if the Clerk runs the Special CD 6 primary on the same day as the City's general municipal election on May 21, 2013, with a standalone runoff, if required, on July 23, 2013.

Respectfully submitted,

  
June Lagmay  
City Clerk

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EXE-040-12