

APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL
RESOLUTION NO. 2024-188

REPLACING THE *CITY COUNCIL POLICY ON FILLING CITY COUNCIL VACANCIES* WITH A NEW POLICY THAT REQUIRES ALL VACANCIES, REGARDLESS OF WHEN OCCURRING DURING A TERM, TO BE APPOINTED BASED ON THE GENERAL MUNICIPAL ELECTION THROUGH THE MOST RECENT GENERAL MUNICIPAL ELECTION CREATING THE VACANCY

WHEREAS, the process for filling City Council vacancies (other than for an elective Mayor) is set forth in Government Code section 36512(b), which provides that if a vacancy occurs, then the City Council, within 60 days from the commencement of the vacancy, must either fill the vacancy by appointment or call a special election to fill the vacancy; and

WHEREAS, the City Council has opted to fill vacancies on the City Council through an appointment process rather than a special election; and

WHEREAS, the State law does not prescribe any procedure for selection of appointees; and

WHEREAS, via Resolution No. 2017-001, the City Council adopted the *City Council Policy On Filling City Council Vacancies* (Policy) which required that all vacancies on the City Council were filled through a Council-led appointment process based on nominations, interviews and selection; and

WHEREAS, the 2019 San Joaquin Grand Jury Report (Case No. 0418) recommended that the City Council amend the Policy so as to create a policy that adhered to the "will of the voters" and did not foster "loyalty, allegiance, and personal obligation" to Council Members making the appointment; and

WHEREAS, while the initial draft amendment to the Policy presented to the City Council reflected the stated recommendation of the Grand Jury, the final version adopted by the City Council pursuant to Resolution No. 2019-250 amended the Policy to implement the Grand Jury's recommendation only for vacancies occurring within the first 365 days of a term and vacancies occurring after the first year continue through a Council-led selection process; and

WHEREAS, the City Council hereby seeks to have all appointments for vacancies on the City Council to be based on election results, regardless of when such vacancies occur; and

WHEREAS, the election results shall be based upon the last most recent General Municipal Election; now, therefore, be it

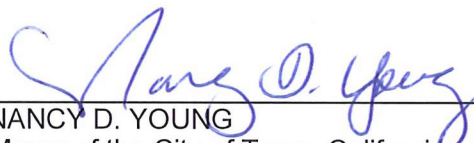
RESOLVED: That pursuant to the plenary powers granted under California Government Code section 36512, the City Council of the City of Tracy hereby adopts the new *City Council Policy On Filling City Council Vacancies* set forth in Exhibit 1 (New Policy); and be it

FURTHER RESOLVED: That the City Council hereby rescinds the existing *City Council Policy On Filling City Council Vacancies* and replaces it in its entirety with the New Policy; and be it

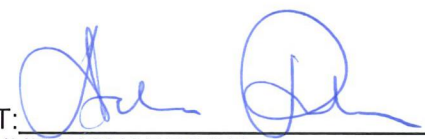
FURTHER RESOLVED: That the New Policy shall become effective immediately upon adoption of this Resolution.

The foregoing Resolution 2024-188 was adopted by the Tracy City Council on October 15, 2024, by the following vote:

AYES: COUNCIL MEMBERS: ARRIOLA, BEDOLLA, EVANS, DAVIS, YOUNG
NOES: COUNCIL MEMBERS: NONE
ABSENT: COUNCIL MEMBERS: NONE
ABSTENTION: COUNCIL MEMBERS: NONE



NANCY D. YOUNG
Mayor of the City of Tracy, California



ATTEST:
ADRIANNE RICHARDSON
City Clerk and Clerk of the Council of the
City of Tracy, California

Exhibit I – City Council Policy on filling City Council Vacancies

EXHIBIT 1

CITY COUNCIL POLICY ON FILLING CITY COUNCIL VACANCIES

Adopted by Resolution No. 2024-188

I. BACKGROUND

The process for filling City Council vacancies (other than for an elective Mayor) is set forth in Government Code section 36512(b), which provides that:

“If a vacancy occurs in an elective office provided for in this chapter, the City Council shall, within 60 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.”

State law does not prescribe any procedure for selection of appointees. Therefore, the City Council may choose any selection method it desires.

II. POLICY

The following procedures will be used by the City Council to fill a City Council vacancy by appointment rather than by special election:

A. Vacancy Occurring During the Vacant Position’s Term

The City Council will appoint the next highest vote-getter in the last most recent General Municipal Election to fill a vacancy on Council occurring during the vacant position’s term. In the event, the next highest vote-getter is not interested in filling the vacancy, Council will appoint the candidate with the next highest votes, and so on and so forth until filled.

The appointment to fill the vacancy shall be made by resolution of the City Council, by simple majority.

B. Additional Requirements

1. The appointment process set forth in this Policy shall apply to all vacancies, regardless of whether the vacancy occurs as a result of election or appointment to alternate office, death, incapacity, resignation, or removal.

2. The appointment process set forth in this Policy reflects plenary powers granted to the City Council under Government Code section 36512(b), and the Mayor’s power of

appointment under Government Code section 40605 is not applicable.

3. This Policy is intended to comply with Government Code section 35612 and other applicable law and to the extent of conflict, such statutory provisions shall govern over this Policy.