



BAKERSFIELD

THE SOUND OF *Something Better*

CITY CLERK'S OFFICE MEMORANDUM

June 24, 2020

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: JULIE DRIMAKIS, CITY CLERK

**SUBJECT: COUNCIL MEETING OF JUNE 24, 2020
AGENDA ITEM CONSENT CALENDAR 8.h.**

12 emails and 5 voicemails received regarding the said agenda item.

Attachments
lr

Lorraine Reza

From: corporateplanners@yahoo.com
Sent: Monday, June 22, 2020 12:28 PM
To: City_Clerk
Subject: URGENT: Ward 1 and November 3, 2020 Election

Follow Up Flag: Follow up
Flag Status: Flagged

Warning: This email originated from outside the City of Bakersfield. Think before you click!

To whom it may concern,

****URGENT ACTION FOR TODAY****

Re: A fair election to replace Ward 1 Councilmember Willie Rivera, because:

Please do the above for the following reasons:

1. Placing the election on the November ballot will save taxpayers roughly \$100K from having to conduct a special election; and 2. Placing it on the November ballot will give voters an opportunity to democratically elect their representative for the next two years.
Include your name, the number of years that you have lived in Bakersfield, and your occupation.

Thank you for your willingness to help ensure that the City Council does the right thing and gives Ward 1 voters an opportunity to elect their next representative in the Fall.

Best,

Denise L. Norris
District #3

Organizational Leadership and Communications Consultant - MS

Lorraine Reza

From: Kristie <kristiekc@bak.rr.com>
Sent: Monday, June 22, 2020 1:08 PM
To: City_Clerk
Subject: re: the Wed. June 24 council vote on the method by which to fill Ward 1 vacancy

Follow Up Flag: Follow up
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Dear City Clerk and City Council:

I urge you to vote at this Wednesday's Council meeting to put the Ward 1 council vacancy on the Nov. election ballot rather than appoint a representative now, or hold a special election for the position. In light of upheaval in our current civic life, along with the reality of our ongoing pandemic, what a positive gesture, what a great opportunity to encourage 1st Ward residents to have a full and lengthy community conversation about who they would desire to fill this position, which provides the most direct voice to communicate and act on their neighborhood's hopes, fears, opportunities and vision.

I am a lifelong resident of Bakersfield, residing since 1971 in Ward 2.
I retired in 2005 after a 37 year career as a Librarian and member of Kern County Library's management team.

Thank you,

Kristie Coons
2208 A Street
kristiekc@bak.rr.com

Lorraine Reza

From: Susie Rainbolt <rainboltsk@yahoo.com>
Sent: Monday, June 22, 2020 2:48 PM
To: City_Clerk
Subject: Ward 1 election

Follow Up Flag: Follow up
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Dear City Council members,

As a constituent residing within the city limits of Bakersfield, CA., for 22 years and employed as a claim adjuster with State Farm Insurance for almost 33 years, it is important that I express my opinion regarding the WARD 1 vacancy. The City Council member seat should be elected by the constituents in order to properly represent our community.

I believe it would be best to place the Ward 1 seat on the November 2020 ballot. This will provide voters the right to elect their representative and it's the most cost-effective decision for our community.

Thank you,

Suzanne Rainbolt
6916 Raven Pass St.
Bakersfield, CA 93313
(661) 204-2155
RainboltSK@yahoo.com

Lorraine Reza

From: Kat <kat@faulknerlaw.com>
Sent: Monday, June 22, 2020 5:03 PM
To: Andrae Gonzales (Andrae@stewardsinc.org)
Cc: City_Clerk; Kat
Subject: November election for vacancy Ward 1

Follow Up Flag: Follow up
Flag Status: Flagged

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Dear Andre: As your constituents, we urge you to stand for and vote for a November ballot election for the Ward 1 vacancy. Thank you.

Kathleen Ellis Faulkner

James L. Faulkner

Matthew J. Faulkner

Lorraine Reza

From: Robin Walters <robinmwalters@aol.com>
Sent: Monday, June 22, 2020 5:29 PM
To: City_Clerk
Subject: Ward 1 Request for Election

Follow Up Flag: Follow up
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Councilmembers:

I am writing in regard to the upcoming vacancy of the Ward 1 City Council seat. I am a lifelong resident of Bakersfield and care deeply for this community.

Residents of Ward 1 should be allowed to duly elect their representative. Our democracy is based upon the notion that the people choose who best represents their interests. This is the cornerstone of our system, and Ward 1 deserves no less.

A November election would provide representative government at a cost savings to taxpayers of \$100,000.00. This is a win for our entire city. In these difficult times, fiscal responsibility must factor into your decision.

Given the mandate of representative government, and the cost savings of a November election, I urge you to allow the residents of Ward 1 to elect their Councilmember in the November election. Thank you for your consideration.

Robin Walters
3524 Country Club Dr.
Bakersfield CA 93306

Lorraine Reza

From: Cathee Romley <catheeromley@gmail.com>
Sent: Tuesday, June 23, 2020 8:06 AM
To: City_Clerk
Subject: Special Election

Follow Up Flag: Follow up
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June 23, 2020

To the Bakersfield City Council:

I am writing in regard to the upcoming vacancy of the Ward 1 City Council seat. I am a 40 year resident of Bakersfield and am the owner of a house in Ward 1. (4509 Eve Street, 93307).

I strongly feel that it is in the best interest of our city and our community to place the opening for this seat on the November ballot. It is not cost effective to hold a special election, especially in these fiscal times, and an appointment prevents the residents of Ward 1 from making their own determination of who is best to represent them.

Now more than ever, we need every citizen to engage and to use the Democratic process to let their vote count.

Bakersfield has always been responsive to its community members and I have appreciated that. Thank you for allowing me to express my opinion.

Sincerely,

Cathee Romley
Catheeromley@gmail.com

Lorraine Reza

From: Josh Taylor <JTaylor@swcarpenters.org>
Sent: Tuesday, June 23, 2020 11:55 AM
To: City_Clerk
Subject: City Council Agenda 6-24-2020 : Resolution H: Support

Follow Up Flag: Follow up
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Hello, my name is Josh Taylor. I am a Bakersfield local resident and have been since 1982. Although I reside in Ward 7, I'm concerned about the recent vacancy in the Ward 1 seat. I stand in support of Resolution H on the 6-24-2020 Bakersfield City Council Agenda, which recommends that the vacancy for Ward 1 be filled via the General Election in November 2020. This is the most democratic and fiscally conservative decision and I ask all Councilmembers to support the staff recommendation. Thank you.

Disclaimer

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Lorraine Reza

From: Ryan Nance <RNance@swcarpenters.org>
Sent: Tuesday, June 23, 2020 11:56 AM
To: City_Clerk
Subject: Resolution H: Support

Follow Up Flag: Follow up
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Warning: This email originated from outside the City of Bakersfield. Think before you click!

To: Bakersfield City Council, all wards

Subject: Resolution H: Support

Hello, my name is Ryan Nance, I'm a carpenter and I have been a Bakersfield resident for over 40 years. Although I reside in Ward 5, I'm concerned about the recent vacancy in the Ward 1 seat. I stand in support of Resolution H, which recommends that the vacancy for Ward 1 be filled via the General Election in November 2020. This is the most democratic and fiscally conservative decision and I ask all Councilmembers to support the staff recommendation.

Thank you,
Ryan Nance

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Lorraine Reza

From: Jorge Torres <JorgeT@swcarpenters.org>
Sent: Tuesday, June 23, 2020 1:14 PM
To: City_Clerk
Subject: Resolution H: Support

Follow Up Flag: Follow up
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Hello, my name is Jorge Garcia Torres, I'm a carpenter and I have been a Bakersfield resident for over 10 years. Although I reside in Ward 5, I'm concerned about the recent vacancy in the Ward 1 seat. I stand in support of Resolution H, which recommends that the vacancy for Ward 1 be filled via the General Election in November 2020. This is the most democratic and fiscally conservative decision and I ask all Councilmembers to support the staff recommendation.

Thanks,

Jorge G. Torres

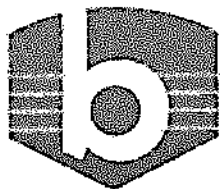
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Lorraine Reza

From: Julie Drimakis
Sent: Tuesday, June 23, 2020 2:13 PM
To: Lorraine Reza
Subject: FW: Willie Rivera, Andre Gonzales, Ken Weir, Bob Smith, Bruce Freeman, Jacquie Sullivan, ChrisParlier

Follow Up Flag: Follow up
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Julie Drimakis, CPMC, CMC | City Clerk

City of Bakersfield
email: jdrimakis@bakersfieldcity.us
web: www.bakersfieldcity.us
phone: 661-326-3073



From: City_Council <City_Council@bakersfieldcity.us>
Sent: Tuesday, June 23, 2020 1:40 PM
To: Julie Drimakis <jdrimakis@bakersfieldcity.us>; Lena R. Legge <llegge@bakersfieldcity.us>
Subject: FW: Willie Rivera, Andre Gonzales, Ken Weir, Bob Smith, Bruce Freeman, Jacquie Sullivan, ChrisParlier

Ward 1 public comment

From: Mary Webb <maryfwebb@bak.rr.com>
Sent: Tuesday, June 23, 2020 11:03 AM
To: City_Council <City_Council@bakersfieldcity.us>
Subject: Willie Rivera, Andre Gonzales, Ken Weir, Bob Smith, Bruce Freeman, Jacquie Sullivan, ChrisParlier

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To: Bakersfield City Council
Re: Filling Vacancy of Ward 1 Seat

Elected Officials:

Why are decisions often made according to the letter of the law, instead of the spirit which was intended? Why do the actions of elected officials frequently defy common sense? Why is "common" sense so uncommon these days?

In the matter before the Council of filling the Ward1 vacancy, why would the council even consider spending city funds and taxpayer dollars on a special election? Where is an answer that makes sense, not one tied up in legislative/ legalese jargon? (No "politics", I hope.)

The front-page news story of Tuesday, June 23, raised further questions with its mention of this item being "quietly pulled from the agenda" of the council's June 10th meeting. This is followed by a quote from a letter received from a FORMER KC Counsel and comments by the current City Attorney and City Clerk. (Hmm. Why the "former" Counsel?)

You've been elected to bring intelligence to the INTERPRETATION of this matter, not lean on precedents or what the law might allow. Please respond to this matter in the interest of the people and to Councilman Rivera's previously-stated wishes: no Special Election. Let's fill the Ward 1 seat through the General Election in November.

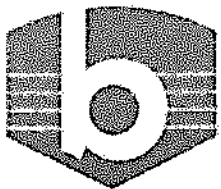
Respectfully,
Mary Webb

(661) 587-0681

Lorraine Reza

From: Julie Drimakis
Sent: Tuesday, June 23, 2020 2:13 PM
To: Lorraine Reza
Subject: FW: Comment on June 24 Meeting Agenda item

Follow Up Flag: Follow up
Flag Status: Flagged



Julie Drimakis, CPMC, CMC | City Clerk

City of Bakersfield
email: jdrimakis@bakersfieldcity.us
web: www.bakersfieldcity.us
phone: 661-326-3073



From: City_Council <City_Council@bakersfieldcity.us>
Sent: Tuesday, June 23, 2020 1:39 PM
To: Julie Drimakis <jdrimakis@bakersfieldcity.us>; Lena R. Legge <llegge@bakersfieldcity.us>
Subject: FW: Comment on June 24 Meeting Agenda item

Comment regarding the Ward 1 special election

From: Ann Gallon <amgallon@atg1.com>
Sent: Tuesday, June 23, 2020 12:53 PM
To: City_Council <City_Council@bakersfieldcity.us>
Subject: Comment on June 24 Meeting Agenda item

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June 23, 2020

To City of Bakersfield Council: RE June 24, 2020 Council Meeting - Please approve a Special Election to fill Ward 1 seat in coordination the Statewide General Election to be held on Tuesday, November 3, 2020.
I urge all Council members to support a November 3 Special Election to fill the Ward 1 Councilmember seat. Anything else (like an appointment or later date) could be deemed undemocratic, not transparent, and costly - thus subject to criticism. I would hope that all discussion of this matter takes place during the scheduled 5:15 public meeting.
Thank you,

Ann Gallon

Ann M. Gallon

3340 Jenkins Road, Bakersfield CA 93314 Active in church in Ward 2 - Emmanuel on Baker Street

Retired; Education/Mental Health/Board volunteer Resident 35 years

Lorraine Reza

From: Teri Goldner <tgoldner2@gmail.com>
Sent: Tuesday, June 23, 2020 6:14 PM
To: City_Clerk; City_Council; bakersfield mayor; Shared admatt
Cc: Theresa Goldner; auditor@kerncounty.com
Subject: June 24, 2020 City Council Meeting Consent Calendar Item Resolutions h - Regarding Ward 1 Special Election Matter
Attachments: city council[2].pdf

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Please see the attached correspondence regarding a Consent Calendar Item (Resolutions h) on the City Council Meeting Agenda for June 24, 2020 regarding a proposed call for a Special Election for Ward 1, and include it as a public document and part of the official record of the proceedings available to the public and with copies to all members of the City Council.

Theresa A. Goldner

4550 California Avenue, 2nd Floor
Bakersfield, CA 93309
(661) 477-7656
E-Mail: tgoldner2@gmail.com

June 23, 2020

VIA FIRST-CLASS MAIL

City Clerk
City of Bakersfield
City Hall South
1501 Truxtun Ave.
Bakersfield, CA 93301

VIA E-MAIL

City Council Members
City_council@bakersfieldcity.us

Mayor Karen K. Goh
mayor@bakersfieldcity.us

Virginia "Ginny" Gennaro, Esq.
City Attorney
admatt@bakersfieldcity.us

Re: City of Bakersfield June 24, 2020 Meeting, Consent Calendar, Resolutions Item h
Proposal to Call for Special Municipal Election of Councilmember for Ward 1
Prior to a Vacancy in Ward 1 Councilmember Office

Dear City Councilmembers, Mayor Karen K. Goh, and City Attorney Ginny Gennaro:

On June 10, 2020, the Bakersfield City Council was asked to vote on a proposal to call for a special election on November 3, 2020 to fill a future vacancy on the City Council. Specifically, Councilman Willie Rivera has announced that he intends to resign on or after the next general election on November 3, 2020 and the Council is being asked to approve a resolution to combine a special election for his Council office with the general election. In the meantime, Councilman Rivera intends to remain in office. On June 9, 2020, I wrote to the Council explaining that it is unlawful to call for a special election under those circumstances. On June 10, 2020, the matter was pulled from the calendar and subsequently re-agendized for June 24, 2020 because City staff wished to study the matter. The first City staff report was filed on June 5, 2020 and dated June 10, 2020 (the "First Staff Report").

On June 17, 2020, City staff filed a second staff report on this matter, recommending that the City Council call for a special election for Ward 1 (the "Second Staff Report"). The facts have not changed since June 10, 2020, except that it is my understanding that Councilmember Rivera may have indicated that he might reconsider and resign immediately (instead of on an

Bakersfield City Councilmembers
Mayor Karen K. Goh
City Attorney Ginny Gennaro
June 23, 2020
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uncertain date more than six months from the date of his original resignation letter) to allow your Council to appoint a replacement to serve out the rest of his term which expires in November 2022.

An appointment is entirely legal because it is consistent with the City of Bakersfield Charter and does not run afoul of Government Code Section 1770. An appointment is also the most transparent option because the interview process will take place in public and pursuant to televised City Council meetings, where all of the public will have the benefit of evaluating the applicants at the same time. An appointment also has the added benefit that it will not cost the City or the taxpayers or any of the applicants even one penny.

The rest of this letter will respond to the issues raised by the Second Staff Report, and includes some of the issues raised in my June 9, 2020 letter for ease of reference.

1. This Is Not An Appropriate Consent Calendar Item.

Consent items are intended for routine and non-controversial items. The issue of whether a City Council should call for a special election six months contrary to terms of the Bakersfield City Charter is neither routine nor non-controversial. The Brown Act requires full transparency for this item. I respectfully request that your Council take it off the consent agenda and instead have a full, robust, and complete public discussion and vote.

2. The Bakersfield City Charter Governs the Process to Fill a Vacancy.

The First Staff report advised your City Council that Government Code Section 36512 authorized your Council to call for a special election. My letter dated June 9, 2020 informed your Council that City staff's reliance on Section 36512 was misplaced, and that the Bakersfield City Charter governs this matter. The Second Staff report now indicates that the City Charter controls, but as discussed below, it urges your Council to call for a special election under circumstances that violate the City Charter.

As indicated in my June 9, 2020 letter to your City Council, the Bakersfield City Charter authorizes the Council to call for a special election to fill a Council vacancy, depending on when the vacancy occurs. The relevant issue is when the vacancy occurs *in relation to the next general election for the vacant council seat*. When a vacancy on the City Council occurs *less than six months* before the next general election for that Council seat, the City Council must fill the vacancy by appointment for the remainder of the unexpired term. Conversely, when a vacancy occurs *more than six months* before the next general election for the vacant council seat, the City Council must first wait four weeks to see if a valid petition for a special election is filed. If a valid petition is filed, the Council has two weeks thereafter to make an interim

Bakersfield City Councilmembers
Mayor Karen K. Goh
City Attorney Ginny Gennaro
June 23, 2020
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appointment to fill the vacancy. If no valid petition is filed, the Council must fill the vacancy by appointment or by special election for the remainder of the unexpired term.

November 8, 2022 is the date of the next general election for the Ward 1 Council seat. There are 28 ½ months from the date of this letter to the next general election for the Ward 1 Council seat. June 8, 2022 is the date that is six months prior to November 8, 2022. If Councilman Rivera vacates the Ward 1 Council seat *before June 8, 2022*, the City Charter instructs that the City Council must wait four weeks to see if a valid special election petition for is filed. If one is filed the Council has two more weeks to make an interim appointment. If one is not filed, only then can the Council fill the vacancy by appointment or by special election for the remainder of the unexpired term.

For ease of reference, the relevant City Charter provision is stated below with the relevant provisions italicized:

Section 16 of the City Charter provides that:

“Vacancies in the Council shall be filled in the following manner, except when caused by recall election.

If a vacancy occurs in the Council at a time less than six months prior to the date of the next general election for the vacant council seat, the Council shall fill the vacancy by appointment for the remainder of the unexpired term.

If a vacancy occurs in the Council at a time more than six months prior to the date of the next general election for the vacant Council seat, a petition requesting a special election may be filed with the Council. Such petition must contain the signatures of qualified electors of the ward equal in number to not less than twenty-five percent of the vote cast for Councilma[n] candidates of that ward at the last general election, and the signatures thereto shall be verified and certified in the same manner as provided for petitions for recall elections.

If the petition is valid the Council shall call a special election to fill the vacancy, to be held not less than ninety days nor more than one hundred eighty days following the certification of the petition to the Council.

In the event that a valid petition requesting a special election is filed, the Council may within two weeks after the petition is filed, make an interim appointment to fill the vacancy, until the results of the election are certified.

If no petition requesting a special election is filed within four weeks after the vacancy occurs, the Council shall fill the vacancy by appointment or by special election for the remainder of the unexpired term."

When legislation prescribes the mode (method) by which a public office vacancy must be filled, the mode is the measure of the power to fill the vacancy. In this case, the mode is contained in Section 16 of the City Charter. Accordingly, your Council is obliged to follow Section 16 of the City Charter and cannot "bypass" any of its provisions when filling vacancies on the City Council. See, 76 Ops. Atty. Gen. 254 (1993), citing *People v. Zamora* (1980) 28 Cal.3d 88.

3. There Is No Ward 1 Vacancy As Long As Councilman Rivera Remains in Office.

To date, Councilman Rivera has provided two deferred resignation documents that City Staff asserts create an immediate vacancy in the Ward 1 Council seat. The first document is a letter dated May 22, 2020. This is a deferred resignation letter addressed to your City Council and states; "... I notify you of my intent to resign as the Ward 1 Councilmember upon the City Council's ratification of the 2020 City Council election results." It fails to include a specific date but notes that the city council election is "already scheduled for November 3, 2020." If a vacancy in office occurred immediately upon delivery of that letter of resignation, it would require your Council to ignore the words of the document and the fact that by its own terms it does not become effective until some unspecified date in the future. The consequence of the interpretation urged by staff is that the fill-the-vacancy clock started running on May 22, 2020, a date which is nearly 30 months or 2 ½ years before the next general election for the Ward 1 Council seat.

The second deferred resignation document that Councilmember Rivera provided is titled "Irrevocable Notice of Intent to Vacate Council Seat." In it, Councilmember Rivera declares that he "shall vacate my councilmember seat either at or before the Bakersfield City Council meeting at which time the Bakersfield City Council ratifies the November 2020 General Election results." Again, there is no specific date for the effectiveness of his resignation. Will it be before the City Council's ratification? The public does not know – because the Notice of Intent does not say. Will it be at the ratification meeting? The public does not know – again because the Notice of Intent fails to say. When is the ratification meeting? There is nothing in the Notice of Intent that tells the public when that will occur. In sum, the Notice of Intent is another deferred resignation letter without a date certain, which leaves open the possibility that he may vacate his councilmember seat *any time before* a City Council meeting that presumably will occur after November 3, 2020.

As explained in my June 9, 2020 letter, the proposal to call for a special election to fill Councilmember Rivera's office is premature as long as he remains in office. "A written resignation takes effect upon the date mentioned therein." (64 Ops. Cal. Atty. Gen 1 (1981)) Elected officials' positions do not become vacant until they are no longer in office, and the City Council lacks authority to call for a special election to fill a seat that is not vacant. If the City Council were to call for a special election to fill Councilmember Rivera's office before his resignation becomes effective, it would violate the Bakersfield City Charter and California Government Code Section 1770.

4. Government Code Section 1770.

As discussed in my June 9, 2020 letter, the Bakersfield City Charter does not define what a "vacancy" in office means. However, the City of Bakersfield is subject to Government Code Section 1770 which defines when a public office becomes vacant.

Government Code Section 1770 provides that:

"An office becomes vacant on the happening of any of the following events before the expiration of the term:

(a) The death of the incumbent.

(b) An adjudication pursuant to a quo warranto proceeding declaring that the incumbent is physically or mentally incapacitated due to disease, illness, or accident, and that there is reasonable cause to believe that the incumbent will not be able to perform the duties of his or her office for the remainder of his or her term. This subdivision shall not apply to offices created by the California Constitution nor to federal or state legislators.

(c) (1) His or her resignation, except as provided in paragraph (2).

(2) In the case of the office of city council member, upon the delivery of a letter of resignation by the resigning council member to the city clerk. The letter of resignation may specify a date on which the resignation will become effective.

(d) His or her removal from office.

(e) His or her ceasing to be an inhabitant of the state, or if the office be local and one for which local residence is required by law, of the district, county, or city for which the officer was chosen or appointed, or within which the duties of his or her office are required to be discharged.

(f) His or her absence from the state without the permission required by law beyond the period allowed by law.

(g) His or her ceasing to discharge the duties of his or her office for the period of three consecutive months, except when prevented by sickness, or when absent from the state with the permission required by law.

(h) His or her conviction of a felony or of any offense involving a violation of his or her official duties. An officer shall be deemed to have been convicted under this subdivision when trial court judgment is entered. For purposes of this subdivision, "trial court judgment" means a judgment by the trial court either sentencing the officer or otherwise upholding and implementing the plea, verdict, or finding.

(i) His or her refusal or neglect to file his or her required oath or bond within the time prescribed.

(j) The decision of a competent tribunal declaring void his or her election or appointment.

(k) The making of an order vacating his or her office or declaring the office vacant when the officer fails to furnish an additional or supplemental bond.

(l) His or her commitment to a hospital or sanitarium by a court of competent jurisdiction as a drug addict, dipsomaniac, inebriate, or stimulant addict; but in that event the office shall not be deemed vacant until the order of commitment has become final.

(m) (1) The incumbent is listed in the Excluded Parties List System and all of the following subparagraphs apply:

(A) The office is one that the incumbent holds ex officio, by virtue of holding another office, or as an appointee.

(B) The appointed or ex officio office is on the governing board of a local agency that is, or may reasonably be expected to be, a participant or principal in a covered transaction, pursuant to federal law.

(C) A federal agency head or designee has not granted the incumbent an exception, in writing, permitting the incumbent to participate in a particular covered transaction in which the local agency is, or may reasonably be expected to be, a participant or principal.

(2) For purposes of this subdivision, the following terms have the following meanings:

(A) "Excluded Parties List System" means the list maintained and disseminated by the federal General Services Administration containing names of, and other information about, persons who are debarred, suspended, disqualified, or otherwise excluded from participating in a covered transaction, pursuant to federal law.

(B) "Local agency" includes, but is not limited to, a county, whether general law or chartered, city, whether general law or chartered, city and county, school district, municipal corporation, district, political subdivision, or any board, commission, or agency of one of these entities.

(C) "Federal law" includes, but is not limited to, federal regulations adopted pursuant to Section 2455 of Public Law 103-355 (108 Stat. 3327), Executive Order No. 11738, Executive Order No. 12549, and Executive Order No. 12689.

A Bakersfield City Council seat is not vacant under Government Code Section 1770(c) when the Councilmember has merely submitted a deferred resignation letter with no specific resignation date and continues to remain in office. This is evidenced by the plain language of section 1770 and its legislative history, and the many cases defining the words "vacant" with respect to public offices.

The Second Staff Report states that "the law leaves open for the interpretation that a vacancy can be scheduled for a future date and a City Council can act on that information in the present moment and plan for that vacancy." In other words, the Second Staff Report argues that it might be possible to construe Section 1770 (c) in a way to justify characterizing the Ward 1 seat as vacant for purposes of calling for a special election, but as an entirely occupied seat when it comes to all other City matters. The closest non-legal analogy I can make to explain why the Staff Report analysis is incorrect, is that it is like being pregnant: either a person is, or is not, pregnant. And either the Ward 1 Council seat is, or is not, vacant. You cannot have it both ways.

In my opinion, both Staff Reports urge you to adopt an unduly strained interpretation of Section 1770 that is inconsistent with the statute, the case law, and the rules of statutory construction.

5. Plain Meaning and Common Sense Statutory Interpretation.

Government Code Section 1770 speaks in plain language. When the language of a statute is clear, its plain meaning should be followed. *Great Lakes Properties, Inc. v. City of El Segundo* (1977) 19 Cal. 3d 152. Section 1770 states that a public office becomes vacant on the happening of enumerated events, and one of those events is an effective resignation. A deferred resignation that will not occur until a future date is not effective until that date has occurred. Government Code Section 1770 (c)(2) indicates that a vacancy occurs when a letter of resignation is submitted, and that a letter of resignation "may specify a date on which the resignation will be effective." This language does not mean that a deferred letter of resignation is transformed into an immediate resignation and vacancy for the purpose of calling a special election, but simultaneously allows the Council seat to remain occupied by the incumbent for all other purposes.

All Section 1770 (c) means is that a delivery of a letter of resignation creates a vacancy when that resignation becomes effective. If a letter of resignation says the resignation is effective immediately, the vacancy is effective immediately. Conversely, if a letter of resignation says that the resignation is effective on a future date, the vacancy is not effective until that future date. It is as simple, logical, and a common sense statutory interpretation as that.

The fact that Councilman Rivera remains on the City Council and participates in meetings and votes, makes referrals to City staff, and represents the Ward 1 residents, demonstrates that he continues to be actively engaged in his Ward 1 Council seat after submitting his deferred resignation letter and Notice of Intent. If he is actively engaged in his office, it means that his resignation is not yet effective. If his resignation is not yet effective, it means his Council seat is not vacant.

6. Case Law Interpreting Vacancy In Office.

The purpose of Section 1770 is to provide a means for filling vacancies when no person is legally entitled to hold the office. *Caldwell v. Bruning* (1966) 64 Cal. 2d 111. The means for filling vacancies in public offices has been the subject of state statutes and case law for more than 150 years. California Political Code Section 996 was the predecessor statute to Government Code Section 1770. In *People by Love v. Bissell* (1874), 49 Cal. 407, the California Supreme Court interpreted Section 996 and held that “a vacancy could only be caused by the resignation or death of the incumbent, or some other event by which the duties of the office were no longer discharged at all...”

The term “vacancy” in office has been interpreted by many court decisions with the same result. In *Fields v. Fong Eu* (1976) 18 Cal. 3d 322, the California Supreme Court holds that a vacancy in office “is a state of being empty, unoccupied, or unfilled, without regard to when or how the condition arose,” citing *Kaiser v. Hopkins* (1936) 6 Cal.2d 537; *In re Quinn* (1973) 35 Cal.App.3d 473. In *Wallace v. Payne* (1925) 197 Cal. 159, the Court explains that “vacancy means with relation to an office, a state of being unoccupied.” In *People v. Chavez* (1898) 122 Cal. 134, the Court holds that “an office is vacant, in the eye of the law, whenever it is unoccupied by a legally qualified incumbent.” Similarly, in *People v. Wells* (1852) 2 Cal. 198, the Court instructs that “vacancy in office can only be said to exist, when the office or place has no legal incumbent to discharge the duties of the office.”

7. The “This Is How We Have Always Done It” Argument.

The Second Staff Report provides a chart explaining when prior vacancies on the City Council were filled. This is another version of the “this is the way we have always done it” argument frequently made by government agencies. However, it is not a legally defensible argument for a process that does not follow the law.

8. Public Policy.

To allow a deferred or conditional resignation to be treated as a vacancy for appointment or special election purposes, while the incumbent remains in office for all other purposes is bad public policy, for two reasons. First, it violates the law as explained above. Second, it creates uncertainty and invites potential abuse of the City Council election and appointment process by allowing a Councilmember to “test the waters” by finding out who his or her successor will be and then decide to withdraw his or her resignation or Notice of Intent. *See, Armistead v. State Personnel Board* (1978) 22 Cal. 3d 198 (allowing an employee to withdraw a resignation letter before the time he set for resignation had expired).

9. Saving the Taxpayers’ Money.

The Second Staff Report urges the City Council to bypass the public petition requirement of the City Charter because it will “ease the process and save taxpayers money by reducing election costs.” These are fallacious arguments. First, the City Council lacks the legal authority to “bypass the City Charter” to “ease the process” or for any reason. As explained above, the mode is the measure of the Council’s power, and when the City Charter specifies a mode for filling Council vacancies, the Council is obliged to follow that Charter process and cannot bypass it.

Second, regarding the argument that bypassing the City Charter and calling for a special election will save the taxpayers’ money – the most cost effective means to fill a City Council vacancy is by appointment. Appointment is a process specifically authorized by the Charter and it is faster, more efficient, entirely transparent to the public, and - will not cost the taxpayers one penny.

Summary

Councilman Rivera’s decision to submit a deferred resignation and remain in office until on or after (or maybe before) the November 2020 election deprives the City Council of its legal option to promptly appoint a successor or to allow the residents of Ward 1 to decide whether they wish to petition for a special election. The appropriate way to fill the office is to comply

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City Attorney Ginny Gennaro
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with the City Charter and Government Code Section 1770, wait until there is an actual vacancy, and then either appoint a replacement to complete the unexpired term, or call for a special election if a valid petition is filed or the Council so desires.

Very truly yours,



Theresa A. Goldner

/tag

cc: Mary B. Bedard, CPA, Kern County Auditor-Controller-County Clerk

Lorraine Reza

From: Kristin Muir
Sent: Tuesday, June 23, 2020 9:48 AM
To: Lorraine Reza
Subject: FW: Voice Message Attached from private number
Attachments: PrivateNumber_20200623_092116.wav

Name: Sheila Roth
Number: Private

Message: Yes, my name is Sheila Roth, R-O-T-H, and I'm a citizen of Bakersfield and of county of course. And I was calling regarding a specific agenda item I believe, although I have not looked at the agenda, was the replacement of Willie Rivera in District 1. I feel that his replacement should be decided by an election this November. I think there's enough time to do that and an election would allow the person who gets that position to represent the District. An appointment does not meet that criteria as being representative. And the other thing is waiting until next year is going to cost us a bunch of money, which we don't have and could better use for other city purposes to help the people. That's it. Thank you very much. Bye.

-----Original Message-----

From: Julie Drimakis
Sent: Tuesday, June 23, 2020 9:26 AM
To: Kristin Muir <kmuir@bakersfieldcity.us>
Subject: FW: Voice Message Attached from private number

Please transcribe and provide to Lorraine.

Julie Drimakis, CPMC, CMC | City Clerk
City of Bakersfield
email: jdrimakis@bakersfieldcity.us
web: www.bakersfieldcity.us
phone: 661-326-3073

-----Original Message-----

From: voicemail@pub-um.hvs.att.com <voicemail@pub-um.hvs.att.com>
Sent: Tuesday, June 23, 2020 9:21 AM
To: Clerk Message Line <6613263100@pub-um.hvs.att.com>
Cc: voip3100 <voip3100@bakersfieldcity.us>
Subject: Voice Message Attached from private number

Warning: This email originated from outside the City of Bakersfield. Think before you click!

Time: Jun 23, 2020 9:21:16 AM

Click attachment to listen to Voice Message

Lorraine Reza

From: Julie Drimakis
Sent: Tuesday, June 23, 2020 11:22 AM
To: Lorraine Reza
Cc: Kristin Muir
Subject: FW: Voice Message Attached from 6612054671 - SADIE FARZAN
Attachments: 6612054671_20200623_101957.wav

Follow Up Flag: Follow up
Flag Status: Flagged

Hello, this is regarding Councilmember Willie Rivera. He's term doesn't end until 2020 but know that he is resigned. So I would like that each council member support November election, please support normal election by supporting that we will face like hundred about 100,000 on special election and placing it on November election will give us an opportunity of having a democratic election. Somebody that we believe will represent us. Thank you. Thank you very much. Good bye

Julie Drimakis, CPMC, CMC | City Clerk
City of Bakersfield
email: jdrimakis@bakersfieldcity.us
web: www.bakersfieldcity.us
phone: 661-326-3073

-----Original Message-----

From: voicemail@pub-um.hvs.att.com <voicemail@pub-um.hvs.att.com>
Sent: Tuesday, June 23, 2020 10:20 AM
To: Clerk Message Line <6613263100@pub-um.hvs.att.com>
Cc: voip3100 <voip3100@bakersfieldcity.us>
Subject: Voice Message Attached from 6612054671 - SADIE FARZAN

Warning: This email originated from outside the City of Bakersfield. Think before you click!

Time: Jun 23, 2020 10:19:57 AM
Click attachment to listen to Voice Message

Lorraine Reza

From: Julie Drimakis
Sent: Tuesday, June 23, 2020 4:20 PM
To: Lorraine Reza
Cc: Kristin Muir
Subject: FW: Voice Message Attached from 6618097773 - FRANK BUTKIEWIC
Attachments: 6618097773_20200623_155036.wav

Follow Up Flag: Follow up
Flag Status: Flagged

Good afternoon. My name is now this they have back correct and I'm calling to urge the city council to please place while we were there at Ward one on the November election, we need to save our tax payers money. This would save us a lot of money. And I would hate for you to use any of the measure and money

Julie Drimakis, CPMC, CMC | City Clerk
City of Bakersfield
email: jdrimakis@bakersfieldcity.us
web: www.bakersfieldcity.us
phone: 661-326-3073

-----Original Message-----

From: voicemail@pub-um.hvs.att.com <voicemail@pub-um.hvs.att.com>
Sent: Tuesday, June 23, 2020 3:51 PM
To: Clerk Message Line <6613263100@pub-um.hvs.att.com>
Cc: voip3100 <voip3100@bakersfieldcity.us>
Subject: Voice Message Attached from 6618097773 - FRANK BUTKIEWIC

Warning: This email originated from outside the City of Bakersfield. Think before you click!

Time: Jun 23, 2020 3:50:36 PM
Click attachment to listen to Voice Message

Lorraine Reza

From: Julie Drimakis
Sent: Tuesday, June 23, 2020 2:45 PM
To: Lorraine Reza
Cc: Kristin Muir
Subject: FW: Voice Message Attached from 6612057324 - RACHEL WOODERD
Attachments: 6612057324_20200623_144156.wav

Follow Up Flag: Follow up
Flag Status: Flagged

Hello, my name is Patsy roulette, and I've been living in Bakersfield for 17 years. And I would like to comment on the ward one action that the council will be considering. I believe that the council should vote to put the ward on council nomination or vote for the new Ward one council member on the November ballot. That would save money and it would give the public an opportunity to choose their elected representatives. So I vote. I asked that they put it on the November ballot. Thank you.

Julie Drimakis, CPMC, CMC | City Clerk
City of Bakersfield
email: jdrimakis@bakersfieldcity.us
web: www.bakersfieldcity.us
phone: 661-326-3073

-----Original Message-----

From: voicemail@pub-um.hvs.att.com <voicemail@pub-um.hvs.att.com>
Sent: Tuesday, June 23, 2020 2:42 PM
To: Clerk Message Line <6613263100@pub-um.hvs.att.com>
Cc: voip3100 <voip3100@bakersfieldcity.us>
Subject: Voice Message Attached from 6612057324 - RACHEL WOODERD

Warning: This email originated from outside the City of Bakersfield. Think before you click!

Time: Jun 23, 2020 2:41:56 PM
Click attachment to listen to Voice Message

Lorraine Reza

From: Julie Drimakis
Sent: Tuesday, June 23, 2020 4:10 PM
To: Lorraine Reza
Cc: Kristin Muir
Subject: FW: Voice Message Attached from 6618097773 - FRANK BUTKIEWIC
Attachments: 6618097773_20200623_155036.wav

Follow Up Flag: Follow up
Flag Status: Flagged

Good afternoon. My name is now this they have back correct and I'm calling to urge the city council to please place Willie Rivera Ward one on the November election, we need to save our tax payers money. This would save us a lot of money. And I would hate for you to use any of the measure and money because that's not what it's intended for. By doing this, you will give the voters the opportunity to elect a representative their own for please I urge you please please, please put this on a November ballot and that the citizens of Ward one decide for next council men or women will be Thank you so much.

Julie Drimakis, CPMC, CMC | City Clerk
City of Bakersfield
email: jdrimakis@bakersfieldcity.us
web: www.bakersfieldcity.us
phone: 661-326-3073

-----Original Message-----

From: voicemail@pub-um.hvs.att.com <voicemail@pub-um.hvs.att.com>
Sent: Tuesday, June 23, 2020 3:51 PM
To: Clerk Message Line <6613263100@pub-um.hvs.att.com>
Cc: voip3100 <voip3100@bakersfieldcity.us>
Subject: Voice Message Attached from 6618097773 - FRANK BUTKIEWIC

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Time: Jun 23, 2020 3:50:36 PM
Click attachment to listen to Voice Message

Lorraine Reza

Subject: FW: Consent Calendar item 8.h.2 (Resolutions) on the City Council Meeting Agenda for June 24, 2020 regarding a special election for Ward 1

Attachments: 3TI588702-city council.4DOCX2.pdf; ATT00001.htm

From: Teri Goldner <tgoldner2@gmail.com>

Sent: Wednesday, June 24, 2020 8:40 AM

To: City_Clerk <City_Clerk@bakersfieldcity.us>; City_Council <City_Council@bakersfieldcity.us>; Shared admatt <admatt@bakersfieldcity.us>

Cc: Theresa Goldner <tgoldner2@gmail.com>; auditor@kerncounty.com

Subject: Consent Calendar item 8.h.2 (Resolutions) on the City Council Meeting Agenda for June 24, 2020 regarding a special election for Ward 1

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Please see the attached SUPPLEMENTAL correspondence regarding Consent Calendar item 8.h.2 (Resolutions) on the City Council Meeting Agenda for June 24, 2020 regarding a special election for Ward 1, and include it as a public document and part of the official record of the proceedings available to the public, and provide copies to all members of the City Council.

Theresa A. Goldner

4550 California Avenue, 2nd Floor
Bakersfield, CA 93309
(661) 477-7656
E-Mail: tgoldner2@gmail.com

June 24, 2020

VIA FIRST-CLASS MAIL

City Clerk
City of Bakersfield
City Hall South
1501 Truxtun Ave.
Bakersfield, CA 93301

VIA E-MAIL

City Council Members
City_council@bakersfieldcity.us

Mayor Karen K. Goh
mayor@bakersfieldcity.us

Virginia "Ginny" Gennaro, Esq.
City Attorney
admatt@bakersfieldcity.us

Re: City of Bakersfield June 24, 2020 Meeting, Agenda Item 8, Consent Calendar,
Resolutions Item h.2
Proposal to Call for Special Municipal Election of Councilmember for Ward 1
Prior to a Vacancy in Ward 1 Councilmember Office

Dear City Councilmembers, Mayor Karen K. Goh, and City Attorney Ginny Gennaro:

This is to provide additional support for my letter to you dated June 23, 2020 and to confirm that both letters relate to the June 24, 2020 City Council meeting agenda item 8h.2 (Resolutions h.2). To date, I have not received an acknowledgement of receipt from the City Clerk, so this is to confirm that both letters have been sent to each of the above as a public records, and to be included as part of the record of the City Council meeting proceedings of June 24, 2020.

There are two legal questions raised by my letters to you and the two Staff Reports: First, whether there is an actual vacancy in office when a City Councilmember remains in office after submitting a deferred letter of resignation. Second, whether a City Council may violate the City Charter provisions in calling for a special election. For the reasons discussed below, the answer to both questions is "No."

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1. Whether there is an actual vacancy in office when a City Councilmember remains in office after submitting a deferred letter of resignation.

There is no vacancy in office when a public official submits a deferred letter of resignation or Notice of Intent that by its own terms does not become effective until a future date or event. There are numerous reported cases including California Supreme Court decisions that define a vacancy in a public office as “a state of being empty, unoccupied, or unfilled.” *Fields v. Fong Eu* (1976) 18 Cal.3d 322.

The purpose of Section 1770 (c) is to confirm that there is no need for a City Council to formally “accept” a letter of resignation. If a Councilmember wishes to resign, all they need to do is deliver a letter of resignation. The letter does not have to be agendaized or formally “accepted” or otherwise acted upon in a City Council meeting. But if that letter states that the resignation will not be effective until a future date, and that date is specified in the letter, the resignation does not become effective until that date.

The Second Staff Report interprets Government Code Section 1770 (c) (2) differently and in a manner that makes no sense. According to City staff, a vacancy occurs whenever a letter of resignation is delivered, regardless of its content or the fact that it expressly states that it will not be effective until a future date or event.

One of the fundamental rules of statutory interpretation is that statutes must be construed in a manner that makes sense. The City staff’s interpretation of Section 1770 (c) (2) does not make sense. Under the staff’s interpretation, if a Councilmember delivers a letter of resignation or Notice of Intent stating that he or she intends to resign “when they are sworn into office as the next Prime Minister of England” or “when pigs fly” or “when they become a contestant in the next Miss Universe competition” it would result in an immediate vacancy in their City Council seats and authorize your Council to call a special election – even if the Councilmember remains fully engaged in their City Council seat. These are extreme examples used to illustrate how nonsensical the City staff’s interpretation is.

Delivery of a letter of resignation does not create a vacancy in a vacuum. You must also look to the content of the letter of resignation to determine when a resignation becomes effective. If the resignation is effective immediately, there is an immediate vacancy. If the resignation does not become effective until a future date, a vacancy will occur on that date.

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City Attorney Ginny Gennaro
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2. A City Council cannot violate the City Charter provisions in calling for a special election.

The Second Staff Report refers to a charter city's "supreme authority over 'municipal affairs'" to allow it to "trump State law." However, a charter city's authority is subject to conflicting provisions in the federal and state constitutions and to preemptive state law. Moreover, a chartered city may not act in a manner that conflicts with its own charter. City and County of San Francisco v. Cooper (1975) 13 Cal. 3d 898; Currier v. City of Rosedale (1970) 4 Cal. App. 3d 997; Brown v. City of Berkeley (1976) 57 Cal. App. 3d 223. "Any act that violates the city charter or is not in compliance with the charter is void. (Ibid.)

The Bakersfield City Charter specifies particular procedures and requirements to fill a vacant City Council seat. Those procedures and provisions are spelled out in Section 16 of the City Charter, and quoted verbatim in my letter to you dated June 23, 2020. Accordingly, your Council does not have the legal authority to ignore those procedures and requirements to "ease the process" as the City staff urges you to do. If a City Council does not like what its City Charter requires to be done to fill a vacant council seat, the remedy is to change the City Charter, not ignore and violate the provisions that it does not like.

I would also like to take this opportunity to correct two sentences in my letter to you dated June 23, 2020. The second and third sentences on page 3 of that letter are corrected by reference to read: "May 8, 2022 is the date that is six months prior to November 8, 2022. If Councilmember Rivera vacates the Ward 1 Council seat before May 8, 2022, the City Charter instructs that the City Council must wait four weeks to see if a valid special election petition is filed.

Very truly yours,

s/ Theresa A. Goldner

Theresa A. Goldner

/tag

cc: Mary B. Bedard, CPA, Kern County Auditor-Controller-County Clerk