TO: Honorable Mayor and Council Members

FROM: Tamara S. Letourneau, City Manager
      Scott C. Smith, City Attorney

DATE: May 16, 2023

SUBJECT: Consideration of Options to Fill City Council Member Vacancy by Appointment or Special Election

RECOMMENDATION

Staff recommends that the City Council provide direction on which one of the following two options it desires to pursue to fill the current vacancy on the City Council:

1. Appoint a person to fill the vacancy on the City Council.

2. Call a special election to fill the vacancy.

BACKGROUND

Sandy Rains resigned from the City Council on May 10, 2023. She was first elected to a two-year term in November 2018, and was re-elected to serve a four-year term in November 2020. Her term will expire at the first City Council meeting in December 2024, when the results of the November 5, 2024, City Council election are certified.

ANALYSIS

As a General Law City, the City of Laguna Niguel is subject to Government Code Section 36512, which provides the procedures and the timeframe for filling a vacancy on the City Council. Section 36512(b) provides that the City Council has 60 days from the date the vacancy is created in which to either appoint a person to fill the position or call a special election to fill that position.

The 60-day time period for the City Council to take action expires on Sunday, July 9, 2023. Action could be taken at either a regular or special meeting. The last regular meeting of the City Council before the 60 days expires is June 20, 2023.

The following are the potential actions that the City Council can take to fill the vacancy on the City Council.
Option #1: Appoint a person to fill the Vacancy

The appointment could be made at any regular or special meeting of the City Council prior to July 9, 2023, with notice being given to the public of the vacancy and the prospective appointment. If a person is appointed to fill the vacancy, they would serve as a City Council Member for the remainder of former Council Member Rains’ unexpired term when the results of the November 5, 2024, City Council elections are certified. The person appointed to fill the vacancy would be permitted to run for a full term on the City Council at the November 2024 general election.

If the City Council decides to appoint a person to fill the City Council vacancy, they must be a minimum of eighteen years of age, a registered voter in Laguna Niguel and have their primary residence located in Laguna Niguel.

Should the City Council decide to appoint a person to fill the City Council vacancy, staff has developed the proposed timeline.

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Date</th>
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<tbody>
<tr>
<td>Post Applications to Fill City Council Vacancy</td>
<td>May 17, 2023</td>
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<tr>
<td>Applications Period for City Council Vacancy</td>
<td>May 17, 2023 – May 26, 2023, at 5 PM</td>
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<tr>
<td>City Council Selects Applicants to Interview</td>
<td>June 6, 2023, Regular City Council Meeting</td>
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<tr>
<td>Interviews to Fill City Council Vacancy and Appointment to Fill the Vacancy</td>
<td>June 14, 2023, Special City Council Meeting</td>
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<tr>
<td>Administration of Oath for New City Council Member</td>
<td>June 20, 2023, Regular City Council Meeting</td>
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The City Clerk’s office would coordinate the application process in an identical manner to the recent process used to fill the vacancy caused by the resignation of former City Council member Sharma.

Option #2: Call a special election and fill the Vacancy

The Government Code requires that if the City Council calls for a special election, the special election be held on the next regularly scheduled established election date not less than 114 days from the call of the special election. If the City Council elects to call a special election, it must do so prior to the 60-day deadline to act of July 9, 2023.

The next regularly established election date would be the first Tuesday after the first Monday in November, November 7, 2023. The vacant City Council member seat will remain vacant until the results of the special election are certified, and the person elected would serve until the end of the term in early December 2024.

Currently there are no other state or local elections scheduled for November 7, 2023. With no other elections to consolidate with, the City would bear the full cost of such an election, which could be conducted in person, or via mailed ballot.
An election called to fill the vacancy may be held in one of two ways: the election may be conducted as a traditional, precinct-based election where voters may either vote at a polling place on election day or vote by mail; or, may be conducted wholly by mail where voters either vote by mail, or at a vote center as early as ten days before the election. The number of vote centers required and the hours of operation are prescribed in the Election Code and are based on the number of registered voters in the city. The last report of registration to the Secretary of State shows 44,951 voters. This number requires that one vote center be open for ten days prior to the all-mail ballot special election and a total of five vote centers be open for four days prior to the election.

Should the Council wish to call a special election, the use of the all-mail ballot option would result in slightly less cost than the traditional, in-precinct model. An all-mail ballot option may also be called for any Tuesday that is at least 114 days from the date the Council adopts the Resolution calling the election. It is not limited to the first Tuesday after the first Monday in November.

In the absence of a Council decision to make an appointment or call a special election before July 9, 2023, the election would default to a precinct-based in person election on the next regularly scheduled election date more than 114 days in the future, or November 7, 2023.

**FISCAL REVIEW**

There is no additional cost for appointing a person to fill the City Council member vacancy.

As there are currently no other state or local elections scheduled for November 7, 2023, a stand-alone special election is estimated to cost $553,878 - $654,752 for an in-person special election; and, $359,555 - $519,764 for a mailed ballot special election. These estimates have been provided from the Orange County Registrar of Voters. If a special election is called, staff recommends that the City's General Fund Reserves be used to pay for all of the one-time unanticipated expenses.

**LEGAL REVIEW**

The City Attorney has reviewed and approved this report as to form.

**CONCLUSION**

Staff recommends that the City Council provide direction on one of the following actions to fill the current vacancy on the City Council:

1. Appoint a person to fill the vacancy on the City Council.

2. Call a special election to fill the vacancy.