

SOUTH GATE CITY COUNCIL SPECIAL MEETING AGENDA

Monday, March 7, 2022 at 5:30 p.m.

**NO IN-PERSON MEETING
ZOOM & TELECONFERENCE ONLY**

DIAL-IN-NUMBER: 1 (669) 900-6833

MEETING ID: 880 3233 2459

<https://us02web.zoom.us/j/88032332459>

CALL TO ORDER:

Al Rios, Mayor

ROLL CALL:

Carmen Avalos, City Clerk

MAYOR

Al Rios

CITY CLERK

Carmen Avalos

VICE MAYOR

Maria del Pilar Avalos

CITY TREASURER

Gregory Martinez

COUNCIL MEMBERS

Maria Davila

Denise Diaz

Gil Hurtado

INTERIM CITY MANAGER

Chris Jeffers

CITY ATTORNEY

Raul F. Salinas

MEETING COMPENSATION DISCLOSURE

Pursuant to Government Code Section 54952.3: Disclosure of compensation for meeting attendance by City Council Members is \$650 monthly regardless of the amount of meetings.

Reports, Recommendations and Requests**1. Discussion on Options and Process Relating to the Impending Vacancy of the City Clerk Position**

The City Council will consider providing direction to staff to proceed in soliciting applications for the City Council to consider for the appointment of a City elector to fill the unexpired term of office within 60 days of the vacancy of the City Clerk elected position. (CM)

2. Discussion to Consider a Resolution Calling for a Special Election

The City Council will consider: (CM)

- a. Whether to submit to the voters of the City of South Gate the question of whether the position of City Clerk should be appointed or remain elected at the upcoming Statewide primary election on June 7, 2022.
- b. If the City Council determines to move forward with a Special Election it may consider adopting the following:
 - A Resolution of the City Council of the City of South Gate, California, calling for the holding of a Special Municipal Elections on Tuesday, June 7, 2022, for submission to the voters a question relating to making the City Clerk an appointive position, and consolidating the election with the Los Angeles County's Statewide Primary Election scheduled to be held on the same date.

Adjournment

I, Carmen Avalos, City Clerk, certify that a true and correct copy of the foregoing Meeting Agenda was posted on March 3, 2022, at 4:30 p.m., as required by law.


Carmen Avalos, City Clerk

Materials related to an item on this Agenda submitted to the City Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office
8650 California Avenue, South Gate, California 90280
(323) 563-9510 * fax (323) 563-5411 * www.cityofsouthgate.org



In compliance with the American with Disabilities Act, if you need special assistance to participate in the City Council Meetings, please contact the Office of the City Clerk. Notification 48 hours prior to the City Council Meeting will enable the City to make reasonable arrangements to assure accessibility.

MAR 02 2022
5:00 pm

City of South Gate
CITY COUNCIL

AGENDA BILL

For the Special Meeting of: March 7, 2022
Originating Department: City Manager's Office

Interim City Manager:  Interim City Manager: 
Chris Jeffers Chris Jeffers

SUBJECT: DISCUSSION ON OPTIONS AND PROCESS RELATING TO THE IMPENDING VACANCY OF THE SOUTH GATE CITY CLERK POSITION

PURPOSE: To hear a report and give direction to staff relating to procedures under Government Code Section 36512, for the filling of vacancy in an elected office.

RECOMMENDED ACTION: The City Council will consider providing direction to staff to proceed in soliciting applications for the City Council to consider for the appointment of a City elector to fill the unexpired term of office within 60 days of the vacancy of the City Clerk elected position.

FISCAL IMPACT: The cost of soliciting applications and assisting the City Council to interview candidates for the appointment of a City Clerk will be a nominal action which can be provided without additional appropriation.

ANALYSIS: The current City Clerk, Carmen Avalos, has announced that she will be resigning her elected office effective March 30, 2022. Her elected term ends on November 8, 2022, which means that there are 7 months and 6 days (219 days in total) remaining in her unexpired term of office.

The filling of a vacancy of an elected office is governed by Government Code Section 36512, which requires the City Council to either fill the vacancy by appointment or call for a special election to fill the vacancy. Under the Government Code Section 36512, the calling of a special election for filling a vacancy cannot occur less than 114 days from the action of the City Council.

The City Council has no option but to appoint the City Clerk, because there is insufficient time (there are less than 114 days remaining) to call for an election by June 7, 2022, (assuming the Council would have wanted to do so otherwise), and the subsequent election on November 8, 2022 is when the City Clerk's existing term of office would be up for election; thus rendering a special election moot.

In an effort to increase voter participation, the Legislature enacted recent changes to the Election Code establishing dates upon which elections can be held in California. Those dates must now be one of the following: (a) the second Tuesday of April in each even-numbered year, (b) the first Tuesday after the first Monday in June in each odd-numbered year that is evenly divisible by four, (c) the first Tuesday after the first Monday in November of each year, (d) the first Tuesday after the first Monday in March in each even-numbered year. Thus, the next available eligible election date (June 7) is less than the minimum required 114-day period. The next election is on November 8, 2022, when the office of the City Clerk would otherwise be up for election. Under these circumstances the City Council has no option other than to appoint a City Clerk.

Government Code Section 36512(b)(2)(B) states: if the vacancy occurs in the first half of a term of office, but less than 130 days prior to the next general municipal election, or if the vacancy occurs in the second half of a term of office, the person appointed to fill the vacancy shall hold office for the unexpired term of the former incumbent, a person appointed by the City Council shall hold office for the unexpired term of the office. In this case, an individual appointed would serve for the remaining 219 days until November 8, 2022.

The only option, due to requirements under Government Code and Elections Code, is for the City Council to appoint a qualified elector who resides in the City of South Gate. The City Council has wide discretion in its selection process, but it could not appoint someone who would be unwilling to take the Oath of Office or who is disqualified from holding office due to a felony conviction.

In similar practices by other cities, the City Councils have undertaken asking interested and eligible residents to submit an application of interest for appointment to fill the remaining term of office. Typically, that applications would be received over a 2-to-3-week period after the vacancy becomes official. Then the City Council would conduct interviews, in public, of the candidates. Upon completion of those interviews, the City Council would discuss and develop consensus on an individual for appointment to the remaining term of office. Although the City Council can consider any other process it feels may be appropriate, it is strongly advised that consultation with the City Attorney be undertaken to ensure compliance with State Law, including the Brown Act.

BACKGROUND: Past practices where a vacancy has occurred in the City of South Gate have involved a then Mayor, a Council Member and Treasurer, all of which have led to an appointed successor rather than a special election. While the expense in previous times may have led to appointing rather than calling for a special election, the Election Code has changed since those instances which remove the option of considering the special election option in this case.

ATTACHMENT: None

MAR 03 2022

10:00 AM

City of South Gate
CITY COUNCIL

AGENDA BILL

For the Special Meeting of: March 7, 2022

Originating Department: City Manager's Office

Interim City Manager:



Chris Jeffers

Interim City Manager:



Chris Jeffers

SUBJECT: WHETHER THE CITY COUNCIL WILL CONSIDER A RESOLUTION CALLING FOR A SPECIAL ELECTION FOR VOTERS TO CONSIDER THE QUESTION OF WHETHER THE OFFICE OF CITY CLERK SHALL BE APPOINTED

PURPOSE: City Council to consider whether to submit to voters of the City of South Gate the question of whether the position of City Clerk should be appointed or remain elected at the upcoming Statewide primary election on June 7, 2022.

RECOMMENDED ACTION: There is no City staff recommended action however, the City Council may consider the following possible resolution:

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOUTH GATE, CALIFORNIA, CALLING FOR THE HOLDING OF A SPECIAL MUNICIPAL ELECTION ON TUESDAY, JUNE 7, 2022, FOR SUBMISSION TO THE VOTERS A QUESTION RELATING TO MAKING THE CITY CLERK AN APPOINTIVE POSITION AND CONSOLIDATING OF THAT ELECTION WITH THE STATEWIDE PRIMARY ELECTION OF THAT SAME DATE, AND OTHER RELATED MATTERS

FISCAL IMPACT: The calling of a Special Consolidated Election with the County of Los Angeles for June 7, 2022, would potentially cost between \$200,000 and \$250,000 according to information provided by the County of Los Angeles Registrar's Office.

ANALYSIS: The anticipated voluntary resignation by the City Clerk prior to the expiration of her term of office has given rise to the question of whether this is an appropriate time to ask voters if the office of the City Clerk should remain an elected position, or should it become an appointed position. This may be the most neutral time given the position will be vacant of an "elected" individual holding it.

According to a description developed by the California City Clerk's Association, the duties of City Clerk, whether elected or appointed are as follows:

"The City Clerk is the local official for elections, local legislation, the Public Records Act, the Political Reform Act, and the Brown Act (open meeting laws). Before and after the City Council takes

action, the City Clerk ensures that actions are in compliance with all federal, state, and local statutes and regulations and that all actions are properly executed, recorded, and archived.

The statutes of the State of California prescribe the basic functions and duties of the City Clerk, and the Government Code and Election Code provides precise and specific responsibilities and procedures to follow.

The Office of City Clerk is a service department with the municipal government upon which the City Council, all City departments, and the general public rely on information regarding the operations and legislative history of the City. The City Clerk serves as a liaison between the public and City Council and provides relates municipal services." (Italics added.)

State law requires that a general law City have a City Council, City Clerk and City Treasurer, though the latter two positions can be either elected or appointed. According to the League of California Cities, in 2010 approximately two-thirds of California's 480 cities have an appointed City Clerk. Proponents favoring the appointment of a City Clerk generally advocate that the person should have specialized skills (due to increasing detailed duties of the City Clerk becoming more specialized and complex) requiring that individual to be extensively familiar and accustomed to federal, state, and local regulations. Those included the Brown Act; Public Records Act; records retention management; contract management/compliance, and strong communication and administrative skills.

Proponents of keeping the position elected generally advocate the need to maintain independent oversight of the City Clerk's responsibilities, free from potentially inappropriate influence by the City Council or City Manager if the City Clerk position were appointive. That view might be advocated in light of the City's previous era of corruption in 2002 which lead to a recall in 2003 of three city council members and a then city treasurer.

If the City Council elects to put forth a measure to the voters, a question that may arise is whether the ballot measure should be placed on the June 7th Election, or should it wait until the City's regular election on November 8th? By placing it in June, the question would be answered prior to any prospective city clerk candidate running for the office in November. It would provide clarity as to the voter's intent of the matter sooner than later. If the matter is placed on November ballot and should a majority of voters voting in the election approve changing the City Clerk to an appointive position, the change would not become effective until November 2026. Any individual receiving the highest number of votes for the office of City Clerk in the November 2022 election would serve only a single four-year term. If voters decide to retain the elective status of the office, then of course, the individual would be able to serve more than one term.

Any individual deciding to seek the office of City Clerk, as is the case with any other municipal elected office, does not need to have any experience, training, or knowledge of the Office duties and/or responsibilities. Such an individual simply needs to be 18-years or older and a registered voter of South Gate.

Time is a critical issue for the Council to consider if this is an appropriate time to place the question to the voters at the election being conducted by the County of Los Angeles on June 7, 2022. For the County to accept a request for consolidation, it must be received no later than March 11, 2022. Due to that limited timeframe, the report and resolution is being presented so that the City Council can, at a minimum, consider the question as to whether it is feasible to consider.

Regardless of when the question is presented to voters, State law sets forth the language that would be used for voters to vote on. Government Code Section 36509(b): "Shall the office of City Clerk be appointive?" The words "yes" and "no" shall be so printed on the ballot that the voters may express their choice.

Under Government Code 34856, when the office of the city clerk is made appointive, appointments to such offices shall be made by the city council unless the city council vests such appointing power in the city manager by ordinance.

ATTACHMENT: Resolution Calling for a Special Election on June 7, 2022

RESOLUTION NO. _____

**CITY OF SOUTH GATE
LOS ANGELES COUNTY, CALIFORNIA**

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOUTH GATE, CALIFORNIA, CALLING FOR THE HOLDING OF A SPECIAL MUNICIPAL ELECTION ON TUESDAY, JUNE 7, 2022, FOR SUBMISSION TO THE VOTERS A QUESTION RELATING TO MAKING THE CITY CLERK AN APPOINTIVE POSITION AND CONSOLIDATING OF THAT ELECTION WITH THE STATEWIDE PRIMARY ELECTION OF THAT SAME DATE, AND OTHE RELATED MATTERS.

WHEREAS, Government Code Section 36508 permits the City of South Gate to submit the question to voters at any municipal election, or a special election held for that purpose, whether the elective officers, or any of them except council members, shall be appointed; and

WHEREAS, the office of the City Clerk is an elective office currently; and

WHEREAS, The City Council desires to submit to the voters at the special election a question relating to making the City Clerk an appointive position; and

WHEREAS, Government Code Section 36509 states that such a question put to the voters shall be printed on ballots used at the election substantially as follows: "Shall the office of City Clerk be appointive?" and such question shall be followed by the words "yes" or "no" also printed on the ballots that the voters may express their choice; and

WHEREAS, consolidating of the Election with the statewide primary election to be held that same date will avoid confusion of voters and lower the cost to administer the Election; and

WHEREAS, the City Council requests services from the Los Angeles County Clerk for the conduct of that election.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SOUTH GATE, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. Pursuant to the requirements of the laws of the State of California relating to General Law Cities, there is called and ordered to be held in the City of South Gate, California, on Tuesday, June 7, 2022, a Special Municipal Election for the purpose of submitting to the voters at the said election the following question ("Measure"):

CC	Shall the office of City Clerk be appointive?	YES
		NO

SECTION 2. The vote requirement for the measure to pass is a majority votes (50% + 1) of the votes cast.

SECTION 3. The ballots to be used at the election shall be in form and content as required by law.

SECTION 4. The City Council hereby directs the City Clerk to transmit a copy of the Measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the Measure, not to exceed 500 words in length, showing the effect of the Measure on the existing law and the operation of the measure, and transmit such impartial analysis to the City Clerk within ten (10) days of the adoption of this Resolution.

SECTION 5. Pursuant to Elections Code Section 10403, the City Council requests that the Los Angeles County Board of Supervisors consent to consolidation of the Special Election with the primary election to be conducted by the Los Angeles County Registrar of Voters on June 7, 2022. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be issued. The election will be held and conducted in accordance with the provisions of law regulating a special election consolidated with a statewide election. The City Council acknowledges and requests that the consolidated election be held and conducted in the manner prescribed in Elections Code Section 10418. Pursuant to election Code Section 10002, the City will bear all costs customarily charged by the County to a city in connection with a ballot question submitted at a municipal election that is consolidated with an election conducted by the County.

SECTION 6. Arguments and Rebuttals. Pursuant to Elections Code Section 9285, the City Council authorizes the following member(s) of its body to file a written argument not exceeding 300 words regarding the City measure as specified above, which shall be submitted to the City Clerk no later than 12:00 Noon on **Friday, March 18, 2022**, and shall be accompanied by the Los Angeles County "Argument and Rebuttal Form" and "Declaration by Author(s)," provided by the City Clerk"

Names(s)

Pursuant to Elections Code section 9285, the City Council authorizes the filing of rebuttal arguments for and against measures in the election. Rebuttal arguments concerning this measure shall be submitted to the City Clerk no later than 12:00 Noon on **Monday, March 28, 2022** and shall be accompanied by the Los Angeles County "Argument and Rebuttal Form" and "Declaration by Author's," provided by the City Clerk. In the event the author chooses to authorize another person to sign the rebuttal argument, the "Authorization for Another Person to Sign Rebuttal Argument" form, provided b the City Clerk, must also be submitted with the rebuttal argument. This paragraph 6 shall expire with the election, and shall not authorize rebuttal arguments as to measures present at any future election.

SECTION 7. CEQA. The adoption of this Resolution is exempt from the California Environmental Quality Act (Public Resources Code statutes 21000 et. Seq. ("CEQA") and 14 Cal. Code Reg. Section 15000 et.seq. (CEQA guidelines)). The calling and noticing of a

Municipal Election are not projects with the meaning of CEQA Guidelines section 15378, subsection (b)(3).

SECTION 8. The City Clerk shall certify to the passage and adoption of the Resolution and enter it into the book of original Resolutions.

SECTION 9. Severability. If any section, subsection, sentence, clause, phrase or portion of this Resolution or its application to any person or circumstance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Resolution or its application to other person and circumstances. The City Council of the City of South Gate hereby declares that it would have adopted this Resolution and each section, subsection, sentence, clause, phrase, or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional and, to that end, the provisions hereof are hereby declared to be severable.

SECTION 10. The City Council directs the City Clerk to file a certified copy of this Resolution with the Registrar of Voters of Los Angeles County on or before March 11, 2022.

PASSED, APPROVED and ADOPTED this 7th day of **March 2022**.

CITY OF SOUTH GATE:

By: _____
Al Rios, Mayor

ATTESTED:

By: _____
Carmen Avalos, City Clerk
(SEAL)

APPROVED AS TO FORM:

By: Raul F. Salinas (03)
Raul F. Salinas, City Attorney