



COUNTY OF SAN MATEO
Inter-Departmental Correspondence
County Counsel



DATE: February 21, 2012
BOARD MEETING DATE: February 28, 2012
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority

TO: Honorable Board of Supervisors

FROM: John C. Beiers, County Counsel

SUBJECT: Process to Fill Office of the Controller Vacancy

RECOMMENDATION:

Approve a process to fill the vacancy caused by the resignation of Tom Huening from the office of County Controller and, if appropriate, adopt a resolution calling a special election to fill the vacancy.

BACKGROUND:

On February 10, 2012, Controller Tom Huening submitted his letter of resignation to your Board effective March 31, 2012.

The County Charter governs the methods by which the Board may fill a vacated elective office. Although changes to the Charter in 2010 now require the Board to call a special election to fill a vacancy on the Board of Supervisors in certain circumstances, such requirement is not imposed on elective offices such as the Controller, and the Board has discretion to determine whether to fill such vacancy by appointment or to call an election. Pursuant to the Charter, the Board must either make the appointment or call for an election within 30 days of the effective date of the vacancy (*i.e.*, by April 30, 2012).

DISCUSSION:

The Charter permits the Board to begin the process to fill the Controller's vacancy prior to the effective date of his resignation. Pursuant to Government Code § 26945, any replacement, whether appointed or elected, must satisfy at least one of the following criteria: 1) be a certified CPA; 2) hold a baccalaureate degree in accounting or its equivalent and not less than three years experience within the last five years in a senior management position in a public agency, private firm, or nonprofit organization; 3) be a designated professional internal auditor with at least sixteen college semester units in accounting, auditing, or finance; or 4) have at least three years of continuous service as a county auditor, chief deputy county auditor, or chief assistant county auditor. If a replacement is appointed prior to the effective date of the resignation, he or she will take office upon the effective date of Mr. Huening's resignation. Such appointee would then hold the office for the remainder of Mr. Huening's term, and if he or she thereafter decides to run for the office, would do so as the incumbent.

To the extent the Board decides to appoint an individual to fill the vacant Controller position, the Board has the discretion to appoint an individual without engaging in a formal selection process, or it can utilize processes it has employed for past supervisorial appointments. That process, for example, included:

- (1) Developing an application made available to the public;
- (2) Receiving application forms as well as complete Forms 700 from potential appointees;
- (3) Receiving an opinion from the Elections Officer regarding the residency eligibility of the candidates;
- (4) Convening a special Board meeting to be facilitated by a non-Board entity (e.g., the League of Women Voters) at which each candidate, and a supporting group, is allowed to give a presentation; and
- (5) Making a selection from among the eligible candidates.

Should the Board call an election to fill the vacancy, its options with respect to the method of election and timing are as follows:

- The Board may call for an election on a special election date to occur not less than 102 days and not more than 131 days from the order calling such election. The 2010 Charter amendments permit the Board to order the special election to be conducted by an all-mail ballot, although it is not required to do so.
- Alternatively, the Board may schedule the election to occur on an election date “regularly established by general law” if that date falls within 270 days from the order calling the election. In other words, the Board may decide that the election should occur on a regularly-established date per the Elections Code. If the Board acts today, the next two regularly-established election dates that fall within the aforementioned 270 day period are the June 5, 2012, Presidential Primary Election and the November 6, 2012, Presidential General Election. If the Board selects the June 5th election date, the Chief Elections Officer may extend the period for securing signatures in lieu of a filing fee, for circulating and filing nomination papers, for publishing the notice of election and for applying for absentee ballots.

FISCAL IMPACT:

If the Board appoints a replacement, there will be no fiscal impact regardless of whether the Board utilizes a formal public process similar to that described above.

If the Board calls for an election on a special election date, a special all-mail ballot election is estimated to cost approximately \$800,000 and a special traditional (polls) election is estimated to cost \$1,700,000.

If the Board calls for an election on a regular election date, the estimated fiscal impact is \$40,000 if the election is held in conjunction with the June 5, 2012, Presidential Primary Election, and \$650,000 if the election is held in conjunction with the November 6, 2012, Presidential General Election. The disparity between the June and November election costs results from the absence of any County measures on the November ballot and the fact that the County is not reimbursed for any federal election costs.

RESOLUTION NO. _____

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

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**RESOLUTION CALLING A SPECIAL ELECTION TO FILL THE VACANCY IN THE
OFFICE OF THE CONTROLLER**

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that

WHEREAS, on February 10, 2012, Controller Tom Huening submitted a letter of resignation to be effective March 31, 2012; and

WHEREAS, Article IV, Section 415 of the San Mateo County Charter provides that if a vacancy occurs in an elective office other than the Board of Supervisors, the Board shall within thirty (30) days of the effective date of the vacancy, either make an appointment or order the calling of a special election to fill the vacancy; and

WHEREAS, Section 415 further provides that the process to fill a vacancy may be commenced immediately upon the date that a resignation is filed and need not be deferred until the effective date of such resignation; and

WHEREAS, Section 415 further provides that the special election shall be held not less than 102 days and not more than 131 days from the order calling the election except that it may be held on an election date regularly established by general law if that date falls within 270 days from the order calling the special election; and

WHEREAS, this Board desires to call a special election to fill the vacancy in the Office of the Controller resulting from the resignation of Tom Huening, and to hold that special election on _____;

NOW THEREFORE, IT IS HEREBY DETERMINED AND ORDERED as follows:

1. Pursuant to Section 415 of the San Mateo County Charter, the Board hereby calls a special election to fill the vacancy in the Office of the Controller resulting from the resignation of Controller Tom Huening.
2. The special election to fill this vacancy shall be held on _____.
3. The Assessor-Clerk-Recorder-Chief Elections Officer shall set the filing dates and publish a notice of special election in accordance with the County Charter and Elections Code.
4. The special election shall be held and conducted, the returns canvassed, and the result declared in accordance with state elections laws.
5. The Assessor-County Clerk-Recorder-Chief Elections Officer shall prepare and mail to each eligible voter in the County a sample ballot and a voter's pamphlet.
6. The special election shall be consolidated with any and all other elections to be held on the date set for the election.

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