



COUNCIL AGENDA: 02-10-09  
ITEM: 3.6

## *Memorandum*

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**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Lee Price, MMC  
City Clerk

**SUBJECT:** SEE BELOW

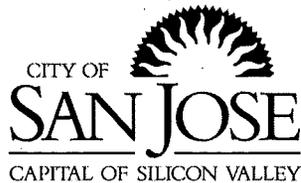
**DATE:** 2-6-09

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**SUBJECT: PROCESS TO FILL UNANTICIPATED VACANCIES ON THE POLICE  
AND FIRE RETIREMENT BOARD**

### **RECOMMENDATION**

As referred by the Rules and Open Government Committee of February 4, 2009 and outlined in the attached memo previously submitted to the Rules and Open Government Committee, consider direction to the City Clerk to conduct a process to fill the unscheduled vacancies of the Police and Fire Department employee members on the Board of Administration of the Police and Fire Department Retirement Plan (Police and Fire Retirement Board).



# Memorandum

**TO:** RULES AND OPEN  
GOVERNMENT COMMITTEE

**FROM:** Lee Price, MMC  
City Clerk

**SUBJECT:** PROCESS TO FILL  
UNANTICIPATED VACANCIES  
ON THE POLICE AND FIRE  
RETIREMENT BOARD

**DATE:** January 30, 2009

## RECOMMENDATION:

Direct the City Clerk to conduct a process to fill the unscheduled vacancies the Police and Fire Departments employee members on the Board of Administration of the Police and Fire Department Retirement Plan (Police and Fire Retirement Board).

## BACKGROUND

Under San Jose Municipal Code Section 2.08.120, the membership of the Police and Fire Retirement Board is to include a member who is an employee of the Police Department and a member who is an employee of the Fire Department, each of whom must also be a member of the Police and Fire Retirement Plan.

Bret Muncy, the Police Department representative for active employees whose term expires November 30, 2009, has resigned from the Board effective January 28, 2009. Member Muncy was the only candidate in the employee election conducted among Police Department employees in November 2005 and was appointed to the Retirement Board by the City Council on November 29, 2005. Since the term for this position expires on November 30, 2009, a regularly scheduled nomination and election process will also need to be conducted in the fall.

Mark Skeen, the Fire Department employee, whose term expires November 30, 2011, has submitted his resignation effective February 1, 2009. Member Skeen was the only candidate in the November 2007 election conducted among Fire Department employees and was appointed to the Retirement Board by the City Council as the Fire Department member on November 26, 2007.

The process to fill such vacancies is established in SJMC Section 2.08.1245 (B) and (C). On August 24, 1999 the City Council adopted procedures governing elections to be conducted among officers and employees (see attachment). Section 215 of the procedures specifies that, if an unscheduled vacancy occurs on the Board, the City Council has the choice to appoint the employee who received the next highest number of votes at the last election for the office or it may direct that petitions for appointment be received and submitted to the Police and Fire

Retirement Board for its review and recommendation. The City Council has the discretion in making the appointment of new Police Department employee to a term expiring November 30, 2009 and a Fire Department employee to a term expiring November 30, 2011.

**ANALYSIS**

As there were no other candidates in either of the most recent elections that could be considered for appointment, the Office of the City Clerk, in consultation with the City Attorney and Retirement Services, is recommending that the City Council direct the vacancy be filled in accordance with the existing procedures governing the appointment of members to fill an unscheduled vacancy.

Upon Council direction, the City Clerk will give notice of the vacancies to the eligible employees and the procedures for filing a nomination petition. Employees interested in seeking the appointment have a twenty-one day period from the Notice of Vacancy to obtain ten valid signatures on a nomination petition and submit a candidate's statement of not more than 200 words to the City Clerk. Immediately following the close of the petition period, the City Clerk will submit all petitions for appointment and candidate's statements to the Police and Fire Retirement Board. The Board will review the information submitted and, within 12 days, submit its recommendation for appointment to the City Council.

The Office of the City Clerk has developed the following timeline for the petition/appointment process.

<b>Day/Date</b>	<b>Task/Action</b>
Wednesday, February 4	Rules & Open Government Committee approves item for February 10 Council Agenda
Tuesday, February 10	Council directs process to fill the unscheduled vacancies of the employee members on the Police and Fire Retirement Board. City Clerk issues communication of impending vacancy and petition/appointment process sent via email to all eligible Police and Fire Department employees; 21-day Nomination period opens. Eligible employees must obtain the nomination petition from the City Clerk and submit a completed petition and candidate's statement to the City Clerk by the close of the nomination period.
Tuesday, March 3	Nomination period closes; City Clerk transmits petitions and candidate's statements to Police and Fire Retirement Board for review
Friday, March 13	Memo from City Clerk requesting Council action on appointment process included on the March 24 City Council Agenda
Monday, March 16	Retirement Board recommendation due to City Clerk; City Clerk issues supplemental memo for March 24 Council meeting with the Retirement Board's recommendations
Tuesday, March 24	Council considers the appointments to fill the employee representative terms expiring November 30, 2009 and November 30, 2011 respectively
Thursday, April 1	Newly appointed members attend the regular Police and Fire Retirement Board meeting

Rules and Open Government Committee

January 30, 2009

RE: Process to Fill Unanticipated Vacancies on the Police and Fire Retirement Board

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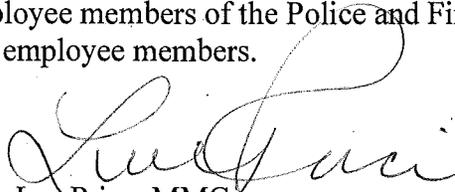
Due to the established timeline in the procedures, the Police and Fire Retirement Board may need to hold a special meeting for the consideration of the nomination petitions sometime between March 4 and March 16.

### **COORDINATION**

This memo has been coordinated with the Office of the City Manager and City Attorney, Retirement Services Department as well with the San Jose Police Officers Association and San Jose Fire Fighters, Local 230.

### **SUMMARY**

The process outlined above is in conformance with the procedures adopted by the City Council regarding the election or appointment of employee members of the Board of Administration for Police and Fire Department Retirement Plan. The process ensures that there is a timely replacement to fill the unscheduled vacancy of employee members of the Police and Fire Retirement Board due to the resignation of the two employee members.



Lee Price, MMC  
City Clerk

For additional information, please contact Dennis Hawkins, Assistant City Clerk at 535-1275

Attachment

CITY OF SAN JOSE ELECTION PROCEDURE  
GOVERNING ELECTIONS CONDUCTED  
AMONG OFFICERS AND EMPLOYEES

100 AUTHORITY

In accordance with applicable sections of the Charter of the City of San Jose and of the San Jose Municipal Code, the following procedures governing the conduct of elections which are required to be held among officers and employees of the City of San Jose are hereby approved by the Council of the City of San Jose on 8-24-99. These procedures shall be followed for all elections held for the purpose of:

- a. Recommending to the City Council an employee of the Police Department or an employee of the Fire Department to serve upon the Board of Administration for Police and Fire Department Retirement Plan pursuant to §2.08.1240 of the San Jose Municipal Code.
- b. Recommending to the City Council members of San Jose Federated City Employees Retirement System to serve upon the Board of Administration for Federated City Employees Retirement System pursuant to §2.08.1040 of the San Jose Municipal Code.
- c. Nominating to the City Council persons for appointment to the Civil Service Commission pursuant to Section 1001 of the Charter of the City of San Jose.
- d. Recommending to the City Council employees of the City to serve on the Suggestion Award Commission pursuant to §2.08.4450 of the San Jose Municipal Code.

200 DATES OF ELECTION

The election for the purposes specified in Section 100 of these procedures shall be held on the fourth Monday in November. The election for a representative of the Police Department on the Police and Fire Department Retirement Board shall be held in the year 1985 and every four years thereafter. The election for a representative of the Fire Department on the Police and Fire Department Retirement Board shall be held in the year 1987 and every four years thereafter. The election for an employee representative to the Federated City Employees Retirement System Board of Administration shall be held in odd-numbered years. The election for a representative to the Civil Service Commission shall be held in the year 2001 and subsequent elections held every fourth year thereafter. The election for a representative of the Suggestion Award Commission shall be held in each odd-numbered year.

210 ELECTION TO FILL VACANCY ON THE CIVIL SERVICE COMMISSION

Special elections held for the purpose of filling a vacancy on the Civil Service Commission for an unexpired term shall be conducted by the City Clerk within ninety (90) days after a declaration by the Council that a vacancy exists, provided that no special election shall be held if such vacancy is found to exist less than ninety (90) days before a regularly scheduled election.

215 UNSCHEDULED VACANCY ON RETIREMENT BOARDS OR SUGGESTION  
AWARD COMMISSION

If a vacancy occurs on the Board of Administration for the Police and Fire Department Retirement Plan, the Board of Administration of the City Employees Retirement Plan or the Suggestion Award Commission because a city employee is ineligible or is unable to complete the term to which elected and appointed, the City Council may appoint the person who received the next highest number of votes at the last election for the office or it may direct that petitions for appointment be received.

- a. If the City Council directs that petitions for appointment be received, the City Clerk shall give notice of the vacancy and the procedure for filing a petition. The form of notice shall conform to applicable provisions of §310 of these procedures and shall be distributed to all employees, as provided in Section 300 of these procedures, within twelve (12) days after the City Council's direction.
- b. Petitions for appointment shall conform to applicable provisions of §400, 410, 500, 510, 520 and 530 of these procedures. Petitions shall be filed from the date of the Notice of Vacancy until 5:00 p.m. on the twenty-first day following the City Council's direction.
- c. All persons being nominated for appointment shall file a candidate's statement of not more than 200 words which describe the applicant's qualifications for the office being sought. Such statements shall be filed with the petition for appointment.
- d. Immediately upon the close of the petition period, the City Clerk shall file all petitions for appointment and candidate's statements with the affected board who shall review the petitions and statements, and, within 12 days, submit its recommendation for appointment to the City Council and shall return the petitions and statements to the City Clerk.

220 HOLIDAYS

If the day or time for any required act specified in this procedure falls on a Saturday, Sunday or holiday, the rules shall apply to the next business day immediately following that day.

300 NOTICE OF ELECTION

Not more than eighty-seven (87) or less than eighty (80) days before the election the City Clerk shall send to each employee a copy of the Notice of Election. A copy of the Notice shall also be sent to each Department Head, Council Appointee, and Mayor and Council Office of the City for posting in a place within the office regularly used for the dissemination of information to that department's employees. Copies shall also be sent to each employee organization.

310 NOTICE OF ELECTION, CONTENTS

The Notice of Election shall contain information relative to the following:

- a. the date of the election

- b. the nomination of candidates
- c. candidate's statements
- d. voter eligibility

400 ELIGIBILITY, CANDIDATES

Nomination petitions for any office shall not be accepted by the City Clerk unless the nominee is eligible to hold such office. Rules of eligibility are as specified in Section 1001 of the Charter, and §2.08.1020, §2.08.1220 and §2.08.4420 of the San Jose Municipal Code.

410 ELIGIBILITY, VOTERS

Only officers and employees of the City of San Jose who held a position in the Civil Service of the City both on August 1, the first day of the month immediately preceding the month in which the nomination period opens, and at the time they cast their ballots, shall be eligible to vote and to sign nomination petitions, provided, however, that no nomination petition shall be void if any signer ceases to hold a position in the Civil Service after signing such petition. Neither members of the City Council nor members of any board or commission of the City are eligible to vote, or to sign nomination petitions. In elections for nomination of persons for appointment to any retirement board, only members of that retirement system shall be eligible to sign nomination petitions and vote.

500 NOMINATIONS

Not more than seventy (70) nor less than fifty-two (52) days before the election, a nomination petition provided by the City Clerk may be filed with the City Clerk. Each petition shall be signed by at least ten (10) persons who will be eligible to vote in the election. The nominee shall sign a statement that he or she accepts the nomination. All signers of the petition shall indicate after their names the department in which they are employed as of October 1, the first day of the month immediately preceding the month in which the election is to be held. No person shall sign more than one petition for any one office. Nomination petitions may not be withdrawn after the close of the nomination period.

510 NOMINATION PETITION FORM

The nomination petition shall be in substantially the following form:

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NOMINATION PETITION  
ELECTION FOR NOMINATION OF PERSONS TO THE CITY  
COUNCIL OF THE CITY OF SAN JOSE FOR  
APPOINTMENT TO \_\_\_\_\_

(DATE OF ELECTION)

We, being eligible officers or employees of the City of San Jose as of (date), do hereby  
nominate

\_\_\_\_\_  
NAME (TYPE OR PRINT) RESIDENCE ADDRESS

\_\_\_\_\_  
Ballot designation, if any

for appointment to the \_\_\_\_\_ for a term expiring \_\_\_\_\_  
Date

\_\_\_\_\_  
PRINT NAME \*SIGNATURE DEPT AS OF OCTOBER 1, \_\_\_\_\_

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

\*Please sign your name as it appears on records in the Human Resources Department

I accept the foregoing nomination.

\_\_\_\_\_  
Nominee's Signature

\*\*\*\*\*

Eligibility of nominee verified

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

Eligibility of signers verified

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

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520 NOMINATION PETITION, SUPPLEMENTAL

If any nomination petition is filed and found by the City Clerk to be signed by fewer than ten (10) eligible voters, a supplemental petition may be circulated and filed no later than the last day for nominations as specified in Section 500.

530 BALLOT DESIGNATION

The nominee's ballot designation, if any, shall not exceed three (3) words, which designate his/her principal professions, vocations or occupations. Such ballot designation shall be made on the nomination petition at the option of the nominee. The City Clerk shall not accept a ballot designation which would mislead the voter, suggest an evaluation of the nominee, or refers to an activity which is prohibited by law. If one of the nominees is the incumbent, that designation and no other shall appear.

600 BALLOTS

Ballots shall be prepared by the City Clerk in substantially the following style and in as many forms as is necessary for the conduct of the election:

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OFFICIAL BALLOT  
ELECTION FOR NOMINATION OF PERSONS TO THE  
COUNCIL OF THE CITY OF SAN JOSE FOR APPOINTMENT  
TO THE \_\_\_\_\_

(ELECTION DATE)

Mark an X in the voting square after the name of the person for whom you wish to vote. (If you wish to vote for a person whose name is not on the ballot, write that person's name on the line provided.)

Name

Occupation

VOTE FOR ONE

Another name

Occupation

One more name

Incumbent

\_\_\_\_\_  
Write In

\_\_\_\_\_  
Occupation

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Only the names of those persons nominated in accordance with Sections 500 - 520 shall be printed on the ballot. The names shall be listed in alphabetical order by surname under

each office without regard to incumbency. The City Clerk shall keep an accurate accounting of the number of ballots printed, distributed, voted and not used.

610 DISTRIBUTION OF BALLOTS

Not later than thirty-one (31) days before the election, the City Clerk shall distribute to each eligible voter the following: One ballot, with voting instructions printed on the ballot; one return envelope, with the voter's name and department on it, preaddressed to the City Clerk; and one copy of each candidate's statement which has been filed with the City Clerk as provided for in Section 700. The City Clerk shall mail the ballots to employees at their residence addresses, as the same appears on records in the Department of Human Resources.

700 CANDIDATE'S STATEMENT

Persons who have been nominated in accordance with Sections 500-520 and whose names will appear on the ballot may, not later than fifty-two (52) days before the election, file with the City Clerk such statement relative to their qualifications for office as they desire to be distributed to the voters. Such statements shall not exceed 200 words excluding signatures. All candidate's statements shall be signed by at least one association or individual. The City Clerk shall prepare copies of all such statements received and shall distribute them as provided in section 610. The statements so filed shall be arranged in the order of the names of the candidates upon the ballot. No responsibility for the accuracy or nature of the contents of the filed candidate's statements is assumed by the City Clerk.

800 INSTRUCTIONS ON BALLOT

The instructions on the ballot shall instruct the voters to:

- a. Mark the ballot
- b. Seal the ballot in the return envelope provided
- c. Mail, route or deliver the return envelope to the City Clerk so it is received prior to 2:00 p.m. on the day of the election.

900 RECEIPT OF RETURNS

Upon receipt of the return envelope, the City Clerk shall note on a roster of eligible voters prepared from records in the Department of Human Resources that the employee has voted, and shall place the return envelope into a locked ballot box. If any return envelope bears the name of a member who, according to the roster has already voted, the return envelope shall be held unopened. If any return envelope is received which does not bear the name of a voter, it shall be held, unopened.

1000 CANVASS OF RETURNS

At 2:00 p.m. on the day of the election, in the Office of the City Clerk, the City Clerk and the canvassing board designated by the City Clerk shall publicly open the ballot box and count the number of return envelopes contained therein. If the number of envelopes exceeds the number of voters indicated on the roster, a number of envelopes equal to the excess shall be drawn out by the City Clerk, endorsed by the canvassing board, and not opened. The remaining envelopes shall then be opened, and the ballots counted. If any

envelope contains more than one ballot, none of the ballots contained therein shall be counted, but shall be endorsed by the canvassing board and held aside.

1100 RESULT OF VOTE

The City Clerk shall certify the results of the election to the City Council at its next regular meeting. In the case of an election for nomination to the City Council of an appointment to the Civil Service Commission, the Clerk shall list the names of the three (3) persons receiving the highest number of votes in alphabetical order and shall not certify the number of votes received by each.

1200 DESTRUCTION OF RETURNS

The City Clerk may destroy all supplies, rosters, envelopes, ballots and working papers of an election no sooner than six (6) months after the date of an appointment by the City Council, or in the event of a contest, six (6) months after the resolution of the contest.

1300 TIE VOTE

If at any election, two or more persons receive an equal and the highest number of votes, the City Clerk shall summon the candidates who have received the tie votes to appear before the City Clerk in the Office of the City Clerk, at a time to be designated by the City Clerk. The City Clerk shall at that time and place determine the tie by lot.

1400 WRITE IN CANDIDATES

No person shall be considered a qualified candidate for the Suggestion Award Commission, either of the Retirement Boards, or the Civil Service Commission unless he or she has been nominated in accordance with Section 500 of these procedures, or has filed a declaration of write in candidacy. Said declaration shall be filed by the candidate not later than fourteen (14) days before the election.

1410 DECLARATION OF WRITE-IN CANDIDATE

The declaration form shall be substantially as follows:

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DECLARATION OF WRITE-IN CANDIDATE

I hereby declare that I am a write-in candidate for the office of \_\_\_\_\_, which office is to be voted on at the election held on \_\_\_\_\_, and I request that write-in votes cast for me at said election be counted.

\_\_\_\_\_  
date

\_\_\_\_\_  
signature

\_\_\_\_\_  
printed name

\_\_\_\_\_  
residence address

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