

**CITY COUNCIL OF THE CITY OF SONORA
STAFF REPORT**

MEETING DATE: FEBRUARY 4, 2019

TO: CITY COUNCIL

FROM: DOUGLAS L. WHITE, CITY ATTORNEY

SUBJECT: DISCUSSION AND DIRECTION FROM THE CITY COUNCIL
PERTAINING TO THE APPOINTMENT OF THE CITY CLERK

RECOMMENDATION:

Staff recommends the City Council consider and provide direction concerning the potential appointment of a qualified resident to fill the position of City Clerk or alternatively appoint a Councilmember to serve as City Clerk Pro Tempore for the remainder of the previous City Clerk's term of office.

BACKGROUND/DISCUSSION:

In October of 2018, Marijane Cassinetta, the former City Clerk/Treasurer of the City of Sonora (the "City Clerk"), provided notice and resigned from that position effective January 2, 2019. Ms. Cassinetta was previously elected to City Clerk/Treasurer on June 7, 2016. She was sworn in to her four-year term on July 5, 2016.

State law requires that when a vacancy occurs in an elective office, the City Council must within 60 days, fill that vacancy by either appointing a replacement, or by calling for a special election to elect a replacement.¹ On January 7, 2019, the City Council of the City of Sonora ("City Council") carefully considered both options. Due to the fiscal impact of holding a special election to fill this vacancy, the City Council adopted Resolution Number 2019-17B, electing to fill the vacancy by appointment.

State law establishes the requirements and qualifications for a city clerk holding an elective office. California Government Code section 36502 requires city clerks to be "an elector of the city" and a registered voter of the city "at the time of assuming office." Anyone appointed to fill the City Clerk's position must meet these requirements. One possibility City staff contemplated initially was the recommendation of appointing a City employee. However, the City Administrator has determined that many potential City staff members live outside of City limits and are, therefore, ineligible for an interim appointment to the position of City Clerk.

At present, the City Council has two potential appointment options. First, the City Council may appoint a City resident that meets the eligibility requirements to hold office. Alternatively, the

¹ *Id.* § 36512, subd. (b).

City Council may appoint a sitting Councilmember to serve as the City Clerk Pro Tempore. California Government Code section 36804 provides that a city's deputy city clerk must undertake any duties of the city clerk during any absence in that position. If the deputy city clerk's position is vacant or the city does not have a deputy city clerk, then the Mayor is permitted to appoint a councilmember as City Clerk Pro Tempore.² Since, the City does not currently have a deputy city clerk, the Mayor may appoint a Councilmember as City Clerk Pro Tempore.

One concern raised by the possible appointment of a Councilmember to fill this vacancy is the doctrine of incompatible offices under state law. Incompatibility of offices generally occurs when there is the possibility of a significant clash of duties or loyalties between offices. The City Attorney's office has evaluated whether the offices of Councilmember and City Clerk are incompatible, and whether a person can serve in both roles. In evaluating Government Code section 1099, the statute that prohibits simultaneous occupation of two incompatible offices, the California Attorney General has concluded that a public official may not serve in both roles when there is "an absence of statutes permitting both offices to be held by one person."³ Since Government Code section 36804 is a statute that expressly provides for the appointment of a Councilmember as City Clerk Pro Tempore, the roles of Councilmember and City Clerk are not in conflict in this case.

In the event the City Council elects to appoint a Councilmember to hold the position of City Clerk Pro Tempore, staff recommends the City Council authorize the delegation of day-to-day administrative tasks routinely handled by a City Clerk to City staff, including taking minutes at public meetings and preparing the affidavit of the agenda postings. Consequently, the City Clerk Pro Tempore's main duties will be to execute any necessary city documents (e.g. resolutions or to attest to agreements) requiring the City Clerk's signature.

² *Id.*

³ 93 Ops.Cal.Atty.Gen 110 (2010).