



MEETING DATE: 11-5-07
ITEM NO: 9

COUNCIL AGENDA REPORT

DATE: NOVEMBER 1, 2007
TO: MAYOR AND TOWN COUNCIL
FROM: PAMELA S. JACOBS, INTERIM TOWN MANAGER

Pamela Jacobs

SUBJECT: TOWN CLERK AND TOWN TREASURER OFFICES

- A. ADOPT RESOLUTION CALLING ELECTION ON THE QUESTION WHETHER THE TOWN CLERK AND TOWN TREASURER OFFICES SHOULD BE APPOINTIVE; OR
- B. ADOPT RESOLUTION CALLING ELECTION ON THE QUESTION WHETHER THE TOWN CLERK OFFICE SHOULD BE APPOINTIVE
- C. AUTHORIZE BUDGET ADJUSTMENT IN THE AMOUNT DETAILED IN THE FISCAL IMPACT SECTION OF THIS REPORT DEPENDING UPON THE RESOLUTION OPTION APPROVED BY TOWN COUNCIL

RECOMMENDATION:

- a. Adopt resolution calling election on the question regarding whether both offices should be appointive, or
- b. Adopt resolution calling an election on the question whether the Town Clerk office should be elective
- c. Authorize budget adjustment in the amount detailed in the Fiscal Impact section of this report depending upon the resolution option approved by Town Council

BACKGROUND:

The offices of Town Clerk and Town Treasurer are currently elective. On October 15, 2007, Joanne Benjamin, a former member of the Town Council and former Mayor, and Marlyn Rasmussen, a former member of the Town Council, former Mayor and former Clerk Administrator, asked Council to consider calling an election on the question whether to make the offices appointive. Sufficient interest was expressed by Council to place the matter on this agenda for discussion.

PREPARED BY: **ORRY P. KORB**
Town Attorney

OPK:pg

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Reviewed by: _____ Assistant Town Manager OK Town Attorney
_____ Clerk Administrator SC Finance _____ Community Development

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MAYOR AND TOWN COUNCIL

SUBJECT: TOWN CLERK AND TOWN TREASURER OFFICES

NOVEMBER 1, 2007

Section 36508 of the Elections Code authorizes Council to call an election on the question whether to make the offices of Town Clerk and Town Treasurer appointive. Section 36509 of the Elections Code states how the question should be printed on the ballots, offering the option of considering both offices together or only one of the offices. These options are reflected in two alternative forms of resolutions; one calling the election on both offices (Attachment 1) and another calling the question only on the Office of Town Clerk (Attachment 2). Each resolution would call an election on the question to be consolidated with the statewide presidential primary election scheduled for February 5, 2008. Each requests election services provided by the County Registrar of Voters. Each authorizes the Town Attorney to prepare an impartial analysis of the proposed measure. Council must adopt one of these resolutions in order to ensure that the question whether to make one or both of the offices appointive be on the ballot of the February 2008 election.

DISCUSSION:

Of 478 municipalities in the State of California, as of 2007, only 138 have elected clerks, and as of 2006, only 174 have elected treasurers. While the statutory duties of these offices remain limited, they have been substantially supplemented with additional duties and, in the case of the Treasurer's duties, are made more challenging by the complex and fast moving investment market. The oversight function associated with these elective offices has been largely supplanted by the Ralph M. Brown Act open meeting law (Government Code section 54950, *et seq.*), the California Public Records Act (Government Code section 6250, *et seq.*), the mandatory annual approval by Town Council of the Town's investment policy (Government Code section 53635), cable television coverage of Council meetings, the adoption of the Town's annual capital and operating budgets, the annual external audit whose report is delivered and reviewed by the Town Council Finance Committee, and Town Manager's Reports, and the monthly Treasurer's Reports.

The sole statutory requirement to hold these offices is limited to being a resident who is registered to vote in the Town (Government Code section 36502). Consequently, persons elected to these positions may lack the training and experience necessary to perform their duties. With regard to the duties of the Town Clerk, Council took a series of actions to ensure that important duties were competently performed and supervised. For example, on January 23, 1989, Council adopted Ordinance No. 1780 transferring revenue and tax collection duties from the Town Clerk to the Finance Director. On September 25, 2001, Council adopted Resolution No. 2001-110 establishing the appointive Clerk Administrator position to which responsibility was given over all non statutory duties associated with the operations of the Clerk Department. Finally, in 2004 Council took a series of actions intended to ensure that the statutory duties of the elected Town Clerk would be performed separately from the appointive duties of the professional Clerk Administrator.

While these actions have helped ensure that necessary day-to-day duties of the Clerk Department are performed and supervised by professional staff, there remains some confusion about the duties of the elected Town Clerk. Additional difficulties have resulted from the requirement of Town Code section 2.30.035 that Council conduct an annual review of the performance and salary of the Town Clerk and Treasurer. The Brown Act requires that these actions concerning elected officials occur in public, making honest evaluations awkward at best.

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MAYOR AND TOWN COUNCIL
SUBJECT: TOWN CLERK AND TOWN TREASURER OFFICES
NOVEMBER 1, 2007

The Treasurer's duties involve managing the Town's investment portfolio, which requires professional financial expertise in effectively managing market risks while enhancing the returns on the Town's investments. An educational background in finance and economics and related experience in dealing with the financial markets are essential skills necessary to successfully manage the Town's investment portfolio.

Adoption of the form of resolution in Attachment 1 would result in an election on the question of whether both the Town Clerk and Town Treasurer offices should be appointive. Adoption of the form of resolution in Attachment 2 would limit the question to the Town Clerk office. Should Council adopt either of the resolutions, an election on the question would be consolidated with the February 5, 2008 statewide presidential primary election. The deadline for ballot arguments would be November 14, 2007, and for rebuttal arguments would be November 21, 2007. Both resolutions direct the Town Attorney to prepare an impartial analysis pursuant to Elections Code section 9280. Should the voters approve making one or both of the offices appointive, Council may retain appointing authority or to delegate that authority to the Town Manager.

FISCAL ANALYSIS:

The Town does not have a regular municipal election scheduled to occur prior to November 4, 2008. Consolidating a municipal election with the statewide presidential primary election to occur on February 5, 2008 is estimated to cost between \$36,000 and \$44,000. This cost would increase to approximately \$60,000 to \$70,000 if two Town elections are consolidated with the February 2008 presidential primary election. The FY 2007/08 adopted budget included a \$10,000 budget for elections which has been expended to reimburse the County Registrar of Voters office for costs associated with verifying signatures related to a recent ballot initiative. Depending on Council's approval, the budget adjustment required will be either an additional \$60,000 or \$70,000 (estimated) to be transferred from the Manger's FY 2007/08 contingency account.

Making the Town Clerk office appointive will result in a savings of \$150 per month, the stipend currently paid to the elected Town Clerk. Making the Town Treasurer office appointive will not result in any budget savings because the annual salary of \$15,000 currently paid to the elected Town Treasurer would likely be reallocated to augment the Finance division's professional support costs to ensure that Town staff has sufficient resources to absorb the Treasurer's duties.

Attachments:

1. Resolution calling election on question whether to make the offices of Town Clerk and Town Treasurer appointive.
2. Resolution calling election on question whether to make the office of Town Clerk appointive

Distribution:

Joanne Benjamin
Marlyn Rasmussen

RESOLUTION NO.

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
CALLING A GENERAL MUNICIPAL ELECTION TO BE HELD IN THE TOWN OF LOS GATOS
ON FEBRUARY 5, 2008; REQUESTING SANTA CLARA COUNTY BOARD OF SUPERVISORS TO
AUTHORIZE REGISTRAR OF VOTERS TO PROVIDE ELECTION SERVICES; REQUESTING
CONSOLIDATION OF PRESIDENTIAL PRIMARY ELECTION WITH LOS GATOS MUNICIPAL
ELECTION AND SPECIFYING CERTAIN PROCEDURES FOR THE CONSOLIDATED ELECTION;
TO PROVIDE NOTICE OF ELECTION FOR THE PURPOSE OF AN INITIATIVE MEASURE ELECTION
ON THE QUESTION WHETHER THE ELECTIVE OFFICES OF
TOWN CLERK AND TOWN TREASURER SHALL BE APPOINTIVE

WHEREAS:

- A. Section 36501 of the Government Code states that a city clerk and city treasurer are among the governing officers of a general law city.
- B. The Town of Los Gatos is a general law city and the offices of Town Clerk and Town Treasurer are elective.
- C. Section 36508 of the Government Code provides that the Town Council may submit to the electors the question whether the elective offices of Town Clerk and Town Treasurer shall be appointive.
- D. Section 36509 of the Government Code states how the question of whether the elective offices of Town Clerk and Town Treasurer shall be appointive shall be printed on the ballots.
- E. Of 478 municipalities in the State of California, as of 2007, only 138 have elected clerks, and as of 2006, only 174 have elected treasurers.
- F. The current duties and responsibilities associated with the offices of Town Clerk, including the Clerk Department, and Town Treasurer require the regular services of competent and trained professionals, which can be assured only through an appointive selection process.
- G. Los Gatos Town Code Section 2.30.010 provides that the general municipal election for the Town of Los Gatos shall be held on the day of the statewide general election.
- H. Pursuant to Part 3 of Division 10 of the Elections Code, a general municipal election may be consolidated with a statewide election.
- I. A statewide election will be held on February 5, 2008.

RESOLVED:

- 1. A general municipal election hereby is called to be held in and for the Town of Los Gatos on Tuesday, February 5, 2008, to have a public vote on an initiative measure to read as follows:

Shall the offices of Town Clerk and Town Treasurer be appointive?

2. Pursuant to Elections Code section 10002, the Town Council hereby requests the Board of Supervisors of the County of Santa Clara to make available the services of the Registrar of Voters for the purpose of performing the usual services necessary in the conduct of the consolidated general municipal election, including the provisions of election supplies and voters' pamphlets; and that upon approval of such requests, the Registrar of Voters of the County of Santa Clara shall be reimbursed for all costs incurred by said services.

3. Pursuant to the Elections Code, commencing with section 10400, the Town Council hereby requests the Board of Supervisors of the County of Santa Clara to order the consolidation of the general municipal election to be conducted within the boundaries of the Town of Los Gatos on February 5, 2008, with respect to which the Board of Supervisors of the County of Santa Clara has the power to order a consolidation. The Town Council further consents to and orders the consolidation of the general municipal election hereby called with the presidential primary election. Upon consolidation, the consolidated election shall be held and conducted, election officers appointed, voting precincts designated, ballots printed, polls opened at 7:00 a.m. and closed at 8:00 p.m., ballots counted and returned, returns canvassed, and all other proceedings in connection with the election shall be regulated and done by the Registrar of Voters of the County of Santa Clara in accordance with the provisions of law regulating the elections so consolidated.

4. The Clerk Administrator is hereby authorized and directed as may be necessary to publish a notice of the general municipal election within the time and in the manner specified in Elections Code section 12110. The Clerk Administrator is further authorized and directed to do all other things required by law to hold the general municipal election above provided.

5. The Clerk Administrator is hereby authorized and directed to certify to the adoption of this resolution and to transmit a certified copy to the Board of Supervisors of the County of Santa Clara and to the Registrar of Voters of the County of Santa Clara.

6. The Town Attorney is hereby authorized and directed to prepare an impartial analysis pursuant to Elections Code section 9280.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California held on the ___ day of _____, 2007, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:
MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:

CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

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RESOLUTION NO.

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
CALLING A GENERAL MUNICIPAL ELECTION TO BE HELD IN THE TOWN OF LOS GATOS
ON FEBRUARY 5, 2008; REQUESTING SANTA CLARA COUNTY BOARD OF SUPERVISORS TO
AUTHORIZE REGISTRAR OF VOTERS TO PROVIDE ELECTION SERVICES; REQUESTING
CONSOLIDATION OF PRESIDENTIAL PRIMARY ELECTION WITH LOS GATOS MUNICIPAL
ELECTION AND SPECIFYING CERTAIN PROCEDURES FOR THE CONSOLIDATED ELECTION;
TO PROVIDE NOTICE OF ELECTION FOR THE PURPOSE OF AN INITIATIVE MEASURE
ELECTION ON THE QUESTION WHETHER
THE ELECTIVE OFFICE OF TOWN CLERK SHALL BE APPOINTIVE

WHEREAS:

A. Section 36501 of the Government Code states that a city clerk is among the governing officers of a general law city.

B. The Town of Los Gatos is a general law city and the office of Town Clerk is elective.

C. Section 36508 of the Government Code provides that the Town Council may submit to the electors the question whether the elective office of Town Clerk shall be appointive.

D. Section 36509 of the Government Code states how the question of whether the elective office of Town Clerk shall be appointive shall be printed on the ballots.

E. Of 478 municipalities in the State of California, as of 2007, only 138 have elected clerks.

F. The current duties and responsibilities associated with the office of Town Clerk and the Clerk Department require the regular services of a competent and trained professional, which can be assured only through an appointive selection process.

G. Los Gatos Town Code Section 2.30.010 provides that the general municipal election for the Town of Los Gatos shall be held on the day of the statewide general election.

H. Pursuant to Part 3 of Division 10 of the Elections Code, a general municipal election may be consolidated with a statewide election.

I. A statewide election will be held on February 5, 2008.

RESOLVED:

1. A general municipal election hereby is called to be held in and for the Town of Los Gatos on Tuesday, February 5, 2008, to have a public vote on an initiative measure to read as follows:

Shall the office of Town Clerk be appointive?

2. Pursuant to Elections Code section 10002, the Town Council hereby requests the Board of Supervisors of the County of Santa Clara to make available the services of the Registrar of Voters for the

purpose of performing the usual services necessary in the conduct of the consolidated general municipal election, including the provisions of election supplies and voters' pamphlets; and that upon approval of such requests, the Registrar of Voters of the County of Santa Clara shall be reimbursed for all costs incurred by said services.

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5. The Clerk Administrator is hereby authorized and directed to certify to the adoption of this resolution and to transmit a certified copy to the Board of Supervisors of the County of Santa Clara and to the Registrar of Voters of the County of Santa Clara.

6. The Town Attorney is hereby authorized and directed to prepare an impartial analysis pursuant to Elections Code section 9280.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California held on the ___ day of _____, 2007, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:
MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:

CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

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