

# CITY OF OAKLAND



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May 4, 2011

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Larry Reid  
Council President  
City Hall  
Oakland, CA 94612

**Re: Succession of the City Attorney**

Dear President Reid:

This memorandum provides to you the qualifications required for an appointed City Attorney and procedures for filling a vacant City Attorney's position. This memorandum also outlines the procedures if a sitting City Councilmember is appointed City Attorney and a vacant City Council seat is thus created.

Qualifications for City Attorney

Under City Charter Section 401(2), the appointed City Attorney must be all of the following:

- a citizen of the United States,
- a "qualified elector" A "qualified elector" is a person who is at least 18 years old, resides in Oakland, and is a resident of an Oakland election precinct at least 15 days prior to an Oakland election. (California Elections Code section 321.)
- a resident of Oakland for at least 30 days prior to the appointment
- licensed to practice law in all courts of the State of California
- and prior to his or her election for City Attorney, the person must have been licensed for at least ten years before all courts in the State of California.

Procedure for Appointing a City Attorney

Appointment Within 60 Day Deadline. Within 60 days of the office becoming vacant it must be filled by appointment by a majority vote of the members of the Council (five votes). (Charter Section 401(4).) In contrast to the City Administrator's position, the Mayor does not appoint the City Attorney.

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Special Election. If the City Council does not make an appointment within 60 days, then there must be a special election to fill the seat within 120 days afterward. (Charter Sections 401(4), 205.) (Charter Section 401 defaults to the procedure for City Council special elections.)

If a Sitting Councilmember is Appointed to be City Attorney.

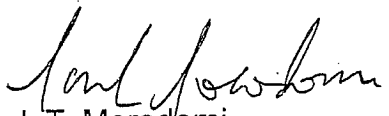
If a sitting councilmember is appointed to be City Attorney, then there will be a vacancy in a City Council seat. If this happens, then there must be a special election within 120 days of that vacancy to fill the seat. (Charter Section 205.) "All vacancies occurring in the office of Councilmember shall be filled by special election within 120 days of a vacancy."

Pending the special election, the City Council may make an interim appointment to the City Council seat until the swearing in of the newly elected Councilmember or 128 days, whichever is shorter. That interim appointee cannot be a candidate for the City Council seat. (Charter Section 205.) The interim appointment by Council is not a substitute for an election within 120 days.

Very truly yours,

JOHN A. RUSSO  
City Attorney

By:

  
Mark T. Morodomi  
Supervising Attorney

MTM:cr  
cc: City Council