

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: County Counsel *[Signature]*

BOARD AGENDA #*E-1

Urgent Routine

AGENDA DATE March 5, 2013

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Deny the Request from the City of Riverbank to Allow the County Elections Official to Conduct a Special Election on June 4, 2013 to Fill a Vacant City Council Position

STAFF RECOMMENDATIONS:

1. Find that by Resolution No. 2013-004 adopted on February 11, 2013, as amended by Resolution No. 2013-004-A adopted February 20, 2013, the City of Riverbank called for a special election to be held on June 4, 2013, which is less than 114 days from the call of the special election as required by Government Code section 36512.
2. Decline the request from the City of Riverbank to allow the County Elections Official to conduct the special election on June 4, 2013 because the call for election does not comply with applicable law requiring the special election to be called not less than 114 days from the call of the special election.

Continued

FISCAL IMPACT:

There is no fiscal impact if the Board adopts staff recommendations. If the Board of Supervisors grants the request of the City of Riverbank to conduct a special election on June 4, 2013, the City of Riverbank will reimburse all costs of holding that election, and the City has agreed to defend and indemnify the County if any legal action is filed to challenge the election or its results.

BOARD ACTION AS FOLLOWS:

No. 2013-97

On motion of Supervisor Monteith, Seconded by Supervisor O'Brien
 and approved by the following vote,
 Ayes: Supervisors: O'Brien, Monteith, and Chairman Chiesa
 Noes: Supervisors: Withrow, De Martini
 Excused or Absent: Supervisors: None
 Abstaining: Supervisor: None

- 1) Approved as recommended
- 2) Denied
- 3) Approved as amended This Item was removed from the consent calendar for discussion and consideration.
- 4) Other:

MOTION:

Approved Staff Recommendations Nos. 1-3; and, **amended** the item to add that the County will be cooperative of any requests of the Superior Court

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

Approval to Deny the Request from the City of Riverbank to Allow the County Elections Official to Conduct a Special Election on June 4, 2013 to Fill a Vacant City Council Position

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RECOMMENDATIONS (cont.):

3. Direct staff to notify the City of Riverbank that the County declines the request to conduct the City's special election, and to assist the City to hold and conduct an election that fully complies with applicable law

DISCUSSION:

A vacancy on the Riverbank City Council occurred when Richard O'Brien was sworn in as Mayor on December 10, 2012. Government Code section 36512 (b) states that the city council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy, which special election shall be held on the next regularly established election date not less than 114 days from the call of the special election. The word shall is mandatory. Thus, the last day for the City Council to fill the vacancy by appointment was February 8, 2013. The last day for the City Council to call a special election on the June 4 election date was February 10, 2013, which is 114 days before the June 4 election date.

On January 28, 2013, the City Council considered three options for filling the vacancy. Two options were to consider methods to fill the vacant position by appointment, and the third option was to call for the special election on June 4. The City Council did not act to adopt any of those options. (See Attachment 1.)

By letter dated February 11, 2013 (Attachment 2), the City of Riverbank ("City") notified your Board that the City Council was unable to reach a consensus on the options to fill city council member vacancy within the 60-day deadline of February 8. The letter further notified your Board that the City Council at its meeting that evening intended to adopt a resolution to call and hold a special election on June 4, 2013.

By letter dated February 13, 2013 (Attachment 3), the County Elections Official informed the City that when the City Council called the election on February 11, this call was on the 113th day and too late to hold the election on June 4 because the call was less than the minimum 114 days required by law.

In response to the Election Official's letter, the City Council adopted amendments to Resolution No. 2013-004 intending to correct any perceived deficiency in the February 11th actions of the City. One resolution stated that February 9 at 12:01 a.m. immediately commenced the calling for and ordering to be held the special municipal election to be held on June 4 by operation of law. The second resolution requests your Board permit the County Elections Official to render specified services necessary to conduct this special election. By letter dated February 21, 2013 (Attachment 4), the City again requested the County to conduct the special election on June 4th.

Approval to Deny the Request from the City of Riverbank to Allow the County Elections Official to Conduct a Special Election on June 4, 2013 to Fill a Vacant City Council Position

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Based on these facts, the Office of County Counsel concludes that Riverbank's call for a special election does not comply with applicable law and, therefore, the special election on June 4 would be invalid and subject to legal challenge. Granting Riverbank's request places the County Elections Official in an awkward position of holding an improper election that could result in legal action to overturn the results of the election. Accordingly, staff recommends that the Board of Supervisors decline the request from the City of Riverbank to allow the County Elections Official to conduct the special election on June 4, 2013, because the call for election does not comply with applicable law requiring the special election to be called not less than 114 days from the call of the special election.

County Counsel and County Election Division staff stand ready, willing and able to assist the City to hold an election that fully complies with applicable law.

POLICY ISSUE:

The staff recommendations support the Board's priority of providing efficient delivery of public services.

STAFFING IMPACT:

Existing staff in the Elections Division will conduct the special election if approved by the Board of Supervisors

CONTACT:

John P. Doering, County Counsel (209) 525-6376

ATTACHMENT 1

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 6.1

SECTION 6: NEW BUSINESS

Meeting Date:	January 28, 2013
Subject:	Reconsider Proposed Appointment Options to Fill the Vacant Councilmember Seat
From:	Jill Anderson, City Manager
Submitted by:	Annabelle Aguilar, CMC, City Clerk

RECOMMENDATION

It is recommended that the City Council reconsider the options previously provided and give direction to staff. The options to consider are: 1) to appoint the candidate that received the next highest number of votes in the 2012 General Municipal Election; or 2) to conduct a recruitment process and appoint an applicant; or 3) to adopt a Resolution calling and giving notice of a special election.

INTRODUCTION

During the City Council meetings held on December 10 and December 17, 2012, and again on January 14, 2013, the City Council considered the provisions of the State law governing the filling of an elected office vacancy, as well as the options to appoint or call for a special election to fill the vacant Councilmember office that was created by the election of former Councilmember Richard O'Brien to the office of Mayor. To-date, the City Council has unanimously agreed to not call for a special election, however, after multiple considerations, the City Council has not agreed on the method to appoint someone. If this impasse cannot be resolved, the adequate time needed to implement the option to appoint by conducting a recruitment process will have diminished. Moreover, if by the February 8, 2013 deadline, an appointment is not made, pursuant to State law, a special election will be conducted.

BACKGROUND

Pursuant to Government Code Section 36512(b), if a vacancy occurs in an elective office, the City Council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call for a special election.

The 60-day period to fill the vacancy began on December 10, 2012, upon Mayor O'Brien taking his office seat, thereby vacating his Councilmember seat with a remaining two-year term that will expire December 2014. As of today, 11 days remain

to make an appointment and failure to do so by February 8, 2012, will invoke the provision to fill the vacancy through the call of a special election.

State laws do not define the process by which an appointment must be made; rather it is left to the discretion of the City Council to determine by consensus what method will be used to make an appointment.

OPTIONS TO RECONSIDER

Option 1: Select the Candidate with the Next Highest Number of Votes Cast

City Council may reconsider appointing the candidate from the November 6, 2012, General Municipal Election who received the next highest number of votes cast for the office of Councilmember; if offer is declined, City Council may continue through the list of candidates by number of highest votes, or stop the process and reconsider options.

- The certified results confirm that Mr. Cal Campbell is the candidate with the next highest number of votes cast.

Option 2: Recruitment and Selection Process

At the December 10th, December 17th, and January 14th meetings, Members of the City Council proposed two options for this process: 1) to conduct this process by only soliciting applications from the unelected candidates of the 2012 General Municipal Election; or 2) to conduct this process by soliciting applications from all eligible Riverbank residents. (Applicants must be a registered voter and Riverbank resident.) The interview and selection process of the applicants will be performed at an open and public meeting; either collectively or one-by-one.

Due to the short time frame of only 11 days remaining until the deadline, this will be the last opportunity to conduct a recruitment process. The following is a proposed schedule to consider:

DATE	ACTION
January 29 (Tuesday)	<ul style="list-style-type: none"> ▪ Staff finalizes recruitment materials ▪ Staff publicizes recruitment
Jan 30– Feb 4 (Wed-Mon)	Open recruitment period: <ul style="list-style-type: none"> ▪ Opens Wednesday, January 30, at 8:00 a.m. ▪ Closes Monday, February 4, at 5:00 p.m.
February 4-5 (Mon-Tues)	<ul style="list-style-type: none"> ▪ Each Council Member receives applications for review ▪ All applicants will be interviewed due to time constraints ▪ Staff arranges the interview process with applicants
February 8 (Friday)	Special City Council meeting at 6:00 p.m. to: <ul style="list-style-type: none"> ▪ interview and appoint an applicant to the vacancy ▪ administer oath to appointee

Option 3: Call for a Special Election

Pursuant to the Government Code, if a special election is called to fill the vacancy, the election shall be held on the next regularly established election date not less than 114 days from the call of the special election.

- Tuesday, June 4, 2013, is the following established election date, which meets the 114-day requirement.
 - A temporary appointment may be made (4-5 months) up to the installation of the elected official, however, must be done by the 60-day deadline of February 8, 2013. (Reconsider Alternatives 1 and 2.); or
 - The office seat may remain vacant until the installation of the elected officer.
 - Cost of a special election is approximately \$38,000 to \$57,000; depending on several factors to conduct the election.
 - Riverbank's March 8, 2011 Special Election cost the City \$30,000.
 - If an election were conducted, the anticipated installation of the elected officer would be at the regular City Council meeting of Monday, June 24, 2013.
- The Stanislaus County Elections Official had informally informed the City that there was a possibility of conducting an all mail ballot election that could occur on August 27, 2013, which estimated the cost of the special election between \$35,600 and \$57,000. To-date, staff is still attempting to look into this possibility; if it is determined possible, staff will present a resolution pursuant to State law.

FINANCIAL IMPACT

There are minimal direct costs in conducting the appointment process to fill the office vacancy. The history of costs for the rendering of election services from the Stanislaus County Elections Division, have typically been less than what has been anticipated. Based on an estimated range of registered voters and approximate cost per voter, it is anticipated the special election would cost approximately \$38,000 to \$57,000, or a potential all mail ballot election would cost approximately \$35,600.00 to \$57,000.

ATTACHMENT

1. Draft Application
2. Resolution

CITY OF RIVERBANK

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, CALLING AND GIVING NOTICE FOR THE HOLDING OF A SPECIAL MUNICIPAL ELECTION ON TUESDAY, JUNE 4, 2013, FOR THE ELECTION OF AN OFFICER TO FILL A VACANCY AS REQUIRED BY THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA RELATING TO GENERAL LAW CITIES AND REQUESTING THAT THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS RENDER SPECIFIED SERVICES TO THE CITY RELATING TO THE CONDUCT OF THE ELECTION

WHEREAS, a vacancy in the office of Councilmember was created by the election and installation of former Councilmember Richard D. O'Brien to the Mayoral office on December 10, 2012; and

WHEREAS, the term of office in which the vacancy occurred ends December, 2014.

NOW, THEREFORE BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, DOES HEREBY DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. That pursuant to the laws of the State of California relating to general law cities, there is called and ordered to be held in the City of Riverbank, California, on Tuesday, June 4, 2013, a Special Municipal Election for the purpose of electing one (1) Councilmember for the remaining term of office ending December 2014, in which the vacancy was created by the November 2012 election and installation of former Councilmember Richard D. O'Brien to the Mayoral office.

SECTION 2. That pursuant to the provisions of § 10002 of the Elections Code of the State of California, the City Council requests the Board of Supervisors of the County of Stanislaus to issue instructions to the County Elections Official to render specified services by taking any and all steps necessary to hold and conduct the Special Municipal Election.

SECTION 3. That pursuant to the provisions of § 10002 of the Elections Code of the State of California, the City Council shall reimburse the County in full for all necessary costs incurred for the election services performed when the work is completed and upon presentation to the City a properly submitted invoice.

SECTION 4. That the estimated cost of \$57,000.00 be appropriated for the payment of services rendered in conducting the Special Municipal Election.

SECTION 5. That pursuant to the provisions of § 10220 through § 10224 of the Elections Code of the State of California, the filing period for nomination papers and Candidate Statements shall commence on Monday, February 11, 2013, and end on Friday, March 8, 2013; nomination papers shall be filed during regular business hours as posted (8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m.; Monday through Friday); except observed Holidays, and that § 10225 pertaining to the time extension of the nomination period is not applicable since there is no incumbent eligible to be elected.

SECTION 6. CANDIDATE STATEMENT (Election Code § 13307)

A. Pursuant to the State of California Elections Code, candidates shall be required to pay, in advance, for the pro rata cost of printing, handling, translating, and mailing of the candidates statement in the voter pamphlet by making a \$700.00 deposit at the time of filing of the nomination papers.

B. The City Clerk is directed to bill candidates for any additional expenses incurred in excess of the \$700.00 or refund any overage paid, depending upon the actual cost.

C. The candidate statement will be limited to no more than 200 words.

SECTION 7. That the polls for the election shall open at seven o'clock a.m. of the day of the election and shall remain open continuously from that time until eight o'clock p.m., except as provided in § 14404 of the State of California Elections Code.

SECTION 8. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 9. That notice of the time and place of holding the election is given and that the City Clerk is authorized, instructed, and directed to give further or additional notice of the election, in time, form, and manner as required by law.

SECTION 10. That the City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the County Elections Division of the County of Stanislaus upon its adoption.

SECTION 11. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 28th day of January, 2013; motioned by Councilmember _____, seconded by Councilmember _____, and upon roll call was carried by the following vote of ____:

**AYES:
NAYS:
ABSENT:
ABSTAIN:**

ATTEST:

**Annabelle Aguilar, CMC
City Clerk**

APPROVED:

**Richard D. O'Brien
Mayor**

6. NEW BUSINESS

Item 6.1: **Reconsider Proposed Appointment Options to Fill the Vacant Councilmember Seat** – It is recommended that the City Council reconsider the options previously provided and give direction to staff. The options to consider are: 1) to appoint the candidate that received the next highest number of votes in the 2012 General Municipal Election; or 2) to conduct a recruitment process and appoint an applicant; or 3) to adopt a Resolution calling and giving notice of a special election.

Jill Anderson, City Manager, opened the item for discussion.

Vice Mayor Tucker spoke in favor of appointing the next highest vote getter, Mr. Cal Campbell; Mayor O'Brien agreed and spoke in favor of pursuing an open recruitment process eligible only to the November 2012 unelected candidates.

Councilmember Nygard explained her support for an all Riverbank registered voter recruitment, but due to the short time frame, she spoke in favor of conducting a special election; Councilmember Barber-Martinez quoted from what was said at President Obama's inauguration, and spoke in support of conducting a special election.

Public Comment:

- *Several people spoke in favor of appointing the next highest vote getter, Mr. Cal Campbell or choosing from the all the unelected candidates to save the cost of a special election.*
- *Several people spoke against the appointment of Mr. Campbell and favored the democratic process of voting through the conduct of a special election.*
- *One person requested the consideration of former Mayor Virginia Madueno who lost the election by 50 votes.*

ACTION: *By motion (Tucker / O'Brien / failed 2-2) to appoint the next highest vote getter from the November 6, 2012 General Municipal election, Cal Campbell, to the vacant Councilmember seat; motion failed by roll call vote.*

ACTION: *By motion (Tucker / failed due to the lack of a second motion) to appoint by conducting a drawing of only the names of the unelected November 2012 candidates.*

Item 6.2: **Presentation by Schneider Electric on Preliminary Energy Audit** – It is recommended that the City Council receive the presentation from Schneider Electric and direct staff to proceed with the implementation of

ATTACHMENT 2



City of Riverbank

6707 Third Street • Riverbank, CA 95367-2396
Phone: (209) 869-7101 • Fax: (209) 869-7100

February 11, 2013

Honorable Stanislaus County
Board of Supervisors
Vito Chiesa, Chairman
1010 Tenth Street, Suite 6500
Modesto CA, 95354

RE: Request the addition of an Emergency Item to the Board's 02/12/13 Agenda

Dear Honorable Chiesa:


A Councilmember vacancy has occurred in the City of Riverbank. The City Council was unable to reach a consensus on the options presented to them by the 60-day deadline of February 8, 2013; and as a result, the City of Riverbank must hold a Special Municipal Election on Tuesday, June 4, 2013.

All requirements and activities to hold this special election have commenced pursuant to the California Elections Code beginning with the nomination period to file papers for office, which opened today at 8:00 a.m. and ends March 8, 2013 at 5:00 p.m. Tonight at our regular City Council meeting, the Council will approve a resolution to call and hold the special election, to request the Board of Supervisors to permit the County Elections Official to render election services to the City of Riverbank, and to appropriate \$57,000.00 to cover the estimated cost of the County providing election services.

Due to the election process immediately commencing and the cancellation of your Board meeting on February 19, 2013, we are requesting that your Clerk of the Board be permitted to add our resolution to the Board of Supervisor's February 12, 2013, agenda as an emergency item for consideration and approval. If approved, this will allow your County Elections Official to begin preparing for the special election without delay.

If you have any questions, please contact me. Thank you for your consideration on this matter.

Best regards,


Annabelle Aguilar, CMC
City Clerk

Attachment: Copy of Resolution No. 2013-004

CITY OF RIVERBANK

RESOLUTION NO. 2013-004

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, CALLING AND GIVING NOTICE FOR THE HOLDING OF A SPECIAL MUNICIPAL ELECTION ON TUESDAY, JUNE 4, 2013, FOR THE ELECTION OF AN OFFICER TO FILL A VACANCY AS REQUIRED BY THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA RELATING TO GENERAL LAW CITIES AND REQUESTING THAT THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS RENDER SPECIFIED SERVICES TO THE CITY RELATING TO THE CONDUCT OF THE ELECTION

WHEREAS, a vacancy of the office of Councilmember was created by the election and installation of former Councilmember Richard D. O'Brien to the Mayoral office on December 10, 2012; and

WHEREAS, the term of office in which the vacancy occurred ends December, 2014.

WHEREAS, pursuant to Elections Code § 12001 for a special local election, the governing body (City Council) of the local agency (City of Riverbank) shall issue a resolution calling the election.

NOW, THEREFORE BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, DOES HEREBY DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. That pursuant to the laws of the State of California relating to general law cities, there is called and ordered to be held in the City of Riverbank, California, on Tuesday, June 4, 2013, a Special Municipal Election for the purpose of electing one (1) Councilmember for the vacant, unexpired term of office ending December 2014, created by the Mayoral election and installation of former Councilmember Richard D. O'Brien.

SECTION 2. That pursuant to the provisions of § 10002 of the Elections Code of the State of California, the City Council requests the Board of Supervisors of the County of Stanislaus to issue instructions to the County Elections Official to render specified services by taking any and all steps necessary to hold and conduct the Special Municipal Election.

SECTION 3. That pursuant to the provisions of § 10002 of the Elections Code of the State of California, the City Council shall reimburse the County in full for all costs incurred for the election services performed when the work is completed and upon presentation to the City a properly submitted invoice.

SECTION 4. That the highest estimated cost of \$57,000.00 will be appropriated for the payment of services rendered in holding the Special Municipal Election.

SECTION 5. That pursuant to the provisions of § 10220, § 10224, and § 10225 of the Elections Code of the State of California, the filing period for nomination papers and Candidate's Statements shall commence on Monday, February 11, 2013, and end on Friday, March 8, 2013; nomination papers shall be filed during the regular business hours of 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m.; Monday through Friday; and, that the time extension of the nomination period is not applicable since there is no incumbent eligible to be elected.

SECTION 6. CANDIDATE STATEMENT (Election Code § 13307)

A. That the City Clerk (Elections Official) of the City of Riverbank determined prior to the opening of the nomination period that a deposit of \$700.00 shall be required in order to file a candidate statement, of no more than 200 words, along with the filing of nomination papers, which is consistent with the City's election practices.

B. That pursuant to EC § 13307 a local agency is allowed to estimate and require advance payment of the pro rata cost of printing, handling, translating and mailing the candidate's statement filed pursuant to this code section, including complying with the federal Voting Rights Act.

C. That this pro rata cost estimate is just an approximation of the final actual cost; if any overpayment occurs, the candidate shall be reimbursed by the City, and if an underpayment occurs, the candidate shall be billed and is required to pay the additional cost upon receipt of the invoice.

SECTION 7. That the polls for the election shall open at seven o'clock a.m. of the day of the election and shall remain open continuously from that time until eight o'clock p.m., except as provided in § 14404 of the State of California Elections Code.

SECTION 8. That in all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 9. That notice of the time and place of holding the election is given and that the City Clerk is authorized, instructed, and directed to give further or additional notice of the election, in time, form, and manner as required by law.

SECTION 10. That the City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the Registrar of Voters, Elections Division of the County of Stanislaus upon its adoption.

SECTION 11. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 11th day of February, 2013; motioned by Councilmember _____, seconded by Councilmember _____, and upon roll call was carried by the following vote of ____:

AYES:
NAYS:
ABSENT:
ABSTAIN:

ATTEST:

Annabelle Aguilar, CMC
City Clerk

APPROVED:

Richard D. O'Brien
Mayor

ATTACHMENT 3



**OFFICE OF COUNTY CLERK-RECORDER
& REGISTRAR OF VOTERS
ELECTIONS DIVISION**

LEE LUNDRIGAN
**Clerk-Recorder, Registrar of Voters &
Commissioner of Civil Marriage**

Elections: 1021 "I" Street, Suite 101, Modesto, CA 95354
Telephone: 209.525.5200
Facsimile: 209.525.5802

February 13, 2013

Mayor Richard O'Brien
Members of the City Council
City of Riverbank
6707 Third Street, Riverbank, CA 95367

RE: June 4 Special Election Request by the City of Riverbank

Dear Mayor O'Brien and Members of the Riverbank City Council,

Government Code section 36512 (b) states that the city council shall, within 60 days from the commencement of a city council vacancy, either fill the vacancy by appointment or call for a special election to fill the vacancy. That special election *shall* be held on the next regularly established election date not less than 114 days from the call for the special election. Under Election Code 354 "*shall*" is mandatory.

Under this statute, the City of Riverbank has a vacancy due to Council Member O'Brien being elected mayor. Councilman O'Brien took the oath of office as Mayor of Riverbank on December 10, 2012 giving the Riverbank City Council until February 8, 2013 (60 days) to fill the vacant city council seat or in the alternative to call a special election to fill the vacancy.

The City Council did not fill the vacancy or call for a special election within 60 days of the commencement of the vacancy, a deadline of February 8, 2013. Rather, on the evening of February 11, 2013, the City Council called for a special election to be held on the next regularly established election date of June 4, 2013. (Resolution No. 2013-004 and Elections Code 12001) This call was made less than 114 days before June 4, 2013. Sunday, February 10, 2013 was the 114th day before June 4. Thus the City Council's call for a special election appears to be in violation of this statutory requirement. The next regularly scheduled 2013 election date pursuant to the California Elections Code is August 27 which is an all mail ballot election.

It should further be noted that Resolution No. 2013-004 does not specify the services requested of the County elections official as required by Elections Code section 10002.

Pursuant to discussions with County Counsel the Stanislaus Registrar of Voters cannot recommend to the Board of Supervisors that the county elections office conduct a June 4 Special Municipal Election on behalf of the City of Riverbank, given that the call for the special election was made less than 114 days before June 4.

We hope this information has been of assistance.

Sincerely,

Lee Lundrigan, Stanislaus County Clerk Recorder & Registrar of Voter

- c. Jill Anderson - City Manager
Annabelle Aguilar, Riverbank City Clerk
Monica Nino, Stanislaus Chief Executive Officer

ATTACHMENT 4



BOARD OF SUPERVISORS

2013 FEB 21 P 3:18

February 21, 2013

Churchwell White LLP
1201 K Street, Suite 710
Sacramento, CA 95814
M 916.468.0950
F 916.468.0951

Douglas L. White
D 916.468.0947
doug@churchwellwhite.com

VIA US MAIL AND E-MAIL (ferroc@stancounty.com)

Stanislaus County of Board of Supervisors
ATTN: Christine Ferraro Tallman, Clerk of the Board of Supervisors
1010 10th St, Suite 6500
Modesto, CA 95354

Re: June 4, 2013 Special Election Request by the City of Riverbank

Dear Ms. Ferraro Tallman:

The City of Riverbank ("City") will be conducting a special municipal election on June 4, 2013 (the "Election") to fill its City Council vacancy. Enclosed with this letter are certified copies of the following City resolutions relating to the call and holding of the Election:

Resolution 2013-004: A Resolution of the City Council of the City of Riverbank, California, Calling and Giving Notice for the Holding of a Special Municipal Election on Tuesday, June 4, 2013, For the Election of an Officer to Fill a Vacancy as Required by the Provisions of the Laws of the State of California Relating to General Law Cities and Requesting that the Board of Supervisors of the County of Stanislaus Render Specified Services to the City Relating to the Conduct of the Election

Resolution 2013-004-A: A Resolution of the City Council of the City of Riverbank, California, Amending Resolution No. 2013-004 to Clarify the Calling of a Special Municipal Election to be Held on Tuesday, June 4, 2013, to Elect an Officer to Fill a City Council Vacancy

Resolution 2013-004-B: A Resolution of the City Council of the City of Riverbank, California, Requesting that the Board of Supervisors of the County of Stanislaus Render Specified Election Services to the City of Riverbank Relating to the Conduct of a Special Municipal Election to be Held on June 4, 2013

Consistent with Election Code section 10002, City is requesting that the Board of Supervisors ("Board") authorize the Stanislaus County Registrar of Voter's office ("Registrar") to provide election services to City for the Election. Specifically, City is requesting that the Registrar provide those election services specified in Resolution 2013-004, Resolution 2013-004-A and

City of Riverbank June 4, 2013 Special Election Request
February 21, 2013
Page 2 of 2

Resolution 2013-004-B for the conduct of the Election. City will pay for all necessary costs and expenses associated with performance of the services by Registrar and City will defend and be the sole responsible entity for any court action brought to challenge the Election.

The City has reviewed the Registrar's letter dated February 13, 2013 (the "Letter"). We agree with the Registrar that the language of Resolution 2013-004 required further clarification. To that end, Resolution 2013-004-A makes clear that the Election was called on February 9, 2013 and that City is required to conduct the Election on June 4, 2013. Resolution 2013-004-B clarifies the scope of election services being requested of the Registrar by City for the Election. Resolution 2013-004-B further establishes City as the sole responsible entity to defend and pay for any court action brought to challenge the Election.

Resolution 2013-004-A and Resolution 2013-004-B clarifies or addresses every concern in the Letter. City is requesting that the Registrar provide those election services it has historically provided to City in the past. Should this request be denied, City will be required to contract with another government entity or private contractor to provide the requested election services for the Election.

Should you have any questions please contact me by phone at (916) 468-0950 or by email at doug@churchwellwhite.com.

Very truly yours,

CHURCHWELL WHITE LLP



Douglas L. White
Partner

DLW/ems

cc: William O'Brien, Stanislaus County Board of Supervisors
Vito Chiesa, Stanislaus County Board of Supervisors
Terry Withrow, Stanislaus County Board of Supervisors
Dick Monteith, Stanislaus County Board of Supervisors
Jim DeMartini, Stanislaus County Board of Supervisors
Monica Nino, Chief Executive Officer for Stanislaus County
Lee Lundrigan, Stanislaus County Clerk & Registrar of Voters

Enclosures: Resolution 2013-004
Resolution 2013-004-A
Resolution 2013-004-B

BOARD OF SUPERVISORS
CITY OF RIVERBANK
2013 FEB 21 P 3:18
RESOLUTION 2013-004

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK,
CALIFORNIA, CALLING AND GIVING NOTICE FOR THE HOLDING OF A SPECIAL
MUNICIPAL ELECTION ON TUESDAY, JUNE 4, 2013, FOR THE ELECTION OF AN
OFFICER TO FILL A VACANCY AS REQUIRED BY THE PROVISIONS OF THE LAWS
OF THE STATE OF CALIFORNIA RELATING TO GENERAL LAW CITIES AND
REQUESTING THAT THE BOARD OF SUPERVISORS OF THE COUNTY OF
STANISLAUS RENDER SPECIFIED SERVICES TO THE CITY RELATING TO THE
CONDUCT OF THE ELECTION**

WHEREAS, a vacancy of the office of Councilmember was created by the election and installation of former Councilmember Richard D. O'Brien to the Mayoral office on December 10, 2012; and

WHEREAS, the term of office in which the vacancy occurred ends December, 2014.

WHEREAS, pursuant to Elections Code § 12001 for a special local election, the governing body (City Council) of the local agency (City of Riverbank) shall issue a resolution calling the election.

NOW, THEREFORE BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, DOES HEREBY DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. That pursuant to the laws of the State of California relating to general law cities, there is called and ordered to be held in the City of Riverbank, California, on Tuesday, June 4, 2013, a Special Municipal Election for the purpose of electing one (1) Councilmember for the vacant, unexpired term of office ending December 2014, created by the Mayoral election and installation of former Councilmember Richard D. O'Brien.

SECTION 2. That pursuant to the provisions of § 10002 of the Elections Code of the State of California, the City Council requests the Board of Supervisors of the County of Stanislaus to issue instructions to the County Elections Official to render specified services by taking any and all steps necessary to hold and conduct the Special Municipal Election.

SECTION 3. That pursuant to the provisions of § 10002 of the Elections Code of the State of California, the City Council shall reimburse the County in full for all costs incurred for the election services performed when the work is completed and upon presentation to the City a properly submitted invoice.

SECTION 4. That the highest estimated cost of \$57,000.00 will be appropriated for the payment of services rendered in holding the Special Municipal Election.

SECTION 5. That pursuant to the provisions of § 10220, § 10224, and § 10225 of the Elections Code of the State of California, the filing period for nomination papers and Candidate's Statements shall commence on Monday, February 11, 2013, and end on Friday, March 8, 2013; nomination papers shall be filed during the regular business hours of 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m.; Monday through Friday; and, that the time extension of the nomination period is not applicable since there is no incumbent eligible to be elected.

SECTION 6. CANDIDATE STATEMENT (Election Code § 13307)

A. That the City Clerk (Elections Official) of the City of Riverbank determined prior to the opening of the nomination period that a deposit of \$700.00 shall be required in order to file a candidate statement, of no more than 200 words, along with the filing of nomination papers, which is consistent with the City's election practices.

B. That pursuant to EC § 13307 a local agency is allowed to estimate and require advance payment of the pro rata cost of printing, handling, translating and mailing the candidate's statement filed pursuant to this code section, including complying with the federal Voting Rights Act.

C. That this pro rata cost estimate is just an approximation of the final actual cost; if any overpayment occurs, the candidate shall be reimbursed by the City, and if an underpayment occurs, the candidate shall be billed and is required to pay the additional cost upon receipt of the invoice.

SECTION 7. That the polls for the election shall open at seven o'clock a.m. of the day of the election and shall remain open continuously from that time until eight o'clock p.m., except as provided in § 14404 of the State of California Elections Code.

SECTION 8. That in all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 9. That notice of the time and place of holding the election is given and that the City Clerk is authorized, instructed, and directed to give further or additional notice of the election, in time, form, and manner as required by law.


SECTION 10. That the City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the Registrar of Voters, Elections Division of the County of Stanislaus upon its adoption.

SECTION 11. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

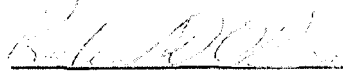
PASSED, APPROVED, AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 11th day of February, 2013; motioned by Vice Mayor Jeanine Tucker, seconded by Councilmember Darlene Barber-Martinez, and upon roll call was carried by the following vote of *4-0:

AYES: Councilmembers: Barber-Martinez, Nygard, Tucker, and Mayor O'Brien
NAYS: None
ABSENT: None
ABSTAIN: None

ATTEST:


Annabelle Aguilar, CMC
City Clerk

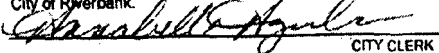
APPROVED:


Richard D. O'Brien
Mayor

*Councilmember vacancy

CERTIFICATION

I hereby certify the foregoing is a true and correct copy of the original document on file in the office of the City Clerk of the City of Riverbank.


CITY CLERK

DATED 02-12-2013

BOARD OF SUPERVISORS CITY OF RIVERBANK

2013 FEB 21 P 3: RESOLUTION NO. 2013-004-A

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA,
AMENDING RESOLUTION NO. 2013-004 TO CLARIFY THE CALLING OF A SPECIAL
MUNICIPAL ELECTION TO BE HELD ON TUESDAY, JUNE 4, 2013, TO ELECT AN OFFICER
TO FILL A CITY COUNCIL VACANCY**

WHEREAS, a vacancy of the office of Councilmember was created by the election and installation of former Councilmember Richard D. O'Brien to the Mayoral office on December 10, 2012; and

WHEREAS, pursuant to GC § 36512 the City Council had a 60-day time period, ending February 8, 2013, to make an appointment or call for a special election, and as a result of several considerations, consensus was not reached on either option, and in so doing, allowed the 60-day deadline to expire; and

WHEREAS, the City Council desired to have the operations of law of the State of California immediately commence at 12:01 a.m. February 9, 2013, thereby calling for the holding of a special municipal election to be held at the next regularly established election date which is June 4, 2013; and

WHEREAS, pursuant to Elections Code § 12001 for a special local election, the City Council of the City of Riverbank issued a resolution calling the election to formerly permit the City Clerk to perform the necessary duties in holding an election, to request services from the County or any other entity as deemed necessary for the conduct of the election, and to appropriate the necessary funds to cover all costs incurred.

NOW, THEREFORE BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, DOES HEREBY DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. The City Council recognized that upon the expiration of the 60-day period, the operation of State law immediately commenced calling and ordering to be held in the City of Riverbank, California, on Tuesday, June 4, 2013, a Special Municipal Election for the purpose of electing one (1) Councilmember for the vacant, unexpired term of office ending December 2014.

SECTION 2. That the City Clerk as the City's Election Official is authorized, instructed, and directed to procure election services in order to properly and lawfully conduct the election.

SECTION 3. That an estimated cost of \$57,000.00 will be appropriated for the payment of services rendered in holding the special municipal election.

SECTION 4. That pursuant to the provisions of the Elections Code of the State of California, the filing period for nomination papers and candidate statements commenced on Monday, February 11, 2013, and will end on Friday, March 8, 2013; nomination papers shall be filed during the regular business hours of 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m., Monday through Friday; and, that the extension of the nomination period is not applicable since there is no incumbent eligible to be elected.

SECTION 5. CANDIDATE STATEMENT (Election Code § 13307)

A. That pursuant to EC § 13307 a local agency is allowed to estimate and require advance payment of the pro rata cost of printing, handling, translating and mailing the candidate's statement filed pursuant to this code section, including complying with the federal Voting Rights Act.

B. That the City Clerk of the City of Riverbank determined prior to the opening of the nomination period that a deposit of \$700.00 shall be required in order to file a candidate statement, of no more than 200 words, along with the filing of nomination papers, which is consistent with the City's election practices.

C. That this pro rata cost estimate is just an approximation of the final actual cost; if any overpayment occurs, the candidate shall be reimbursed by the City, and if an underpayment occurs, the candidate shall be billed and is required to pay the additional cost upon receipt of the invoice.

SECTION 6. That the polls for the election shall open at seven o'clock a.m. of the day of the election and shall remain open continuously from that time until eight o'clock p.m., except as provided in § 14404 of the State of California Elections Code.

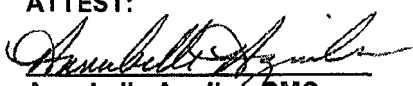
SECTION 7. That in all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

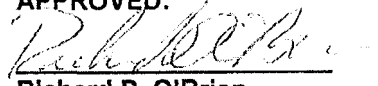
SECTION 9. That notice of the time and place of holding the election is given and that the City Clerk is authorized, instructed, and directed to give further or additional notice of the election, in time, form, and manner as required by law.

SECTION 10. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

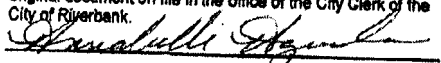
PASSED, APPROVED, AND ADOPTED by the City Council of the City of Riverbank at a special meeting held on the 20th day of February, 2013; motioned by Councilmember Dotty Nygard, seconded by Vice Mayor Jeanine Tucker, and upon roll call was carried by the following vote of *4-0:

AYES: Councilmembers: Barber-Martinez, Nygard, Tucker, and Mayor O'Brien
NAYS: None
ABSENT: None
ABSTAIN: None

ATTEST:

Annabelle Aguilar, CMC
City Clerk

APPROVED:

Richard D. O'Brien
Mayor

*Councilmember vacancy

CERTIFICATION
I hereby certify the foregoing is a true and correct copy of the original document on file in the office of the City Clerk of the City of Riverbank.

CITY CLERK
DATED 02-21-2013

BOARD OF SUPERVISORS

2013 FEB 21 P 3:19 CITY OF RIVERBANK

RESOLUTION NO. 2013-004-B

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK,
CALIFORNIA, REQUESTING THAT THE BOARD OF SUPERVISORS OF THE
COUNTY OF STANISLAUS RENDER SPECIFIED ELECTION SERVICES TO THE
CITY OF RIVERBANK RELATING TO THE CONDUCT OF A SPECIAL MUNICIPAL
ELECTION TO BE HELD ON JUNE 4, 2013**

WHEREAS, a special municipal election is to be held in the City of Riverbank on June 4, 2013; and

WHEREAS, the City of Riverbank has traditionally requested and received election services from the Stanislaus County Registrar of Voters Office, Elections Division, through the consolidation of the City's regular or special elections with statewide elections; and

WHEREAS, in the course of the conduct of a special election it is necessary that the City request election services to be rendered by the Stanislaus County Registrar of Voters, Elections Division, as they are the entity equipped to conduct, canvass, and declare the results of an election in the manner provided by law.

NOW, THEREFORE BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, DOES HEREBY DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. That pursuant to Section 10002 of the Elections Code of the State of California, the City Council requests the Board of Supervisors of the County of Stanislaus to permit the County Elections Official to render specified services to the City relating to the conduct of an election.

SECTION 2. That the specified services requested by the City Council are all the necessary steps and all required elections processes that have been traditionally provided by the Stanislaus County Elections Division in order to properly and lawfully conduct, canvass, and certify the results of an election.

SECTION 3. That pursuant to Section 10002 of the Elections Code of the State of California, the City Council shall reimburse the County in full for all costs incurred for the election services performed when the work is completed and upon presentation to the City of a properly submitted invoice.

SECTION 4. That the City is not relieved of the ultimate responsibility for canvassing the returns of the election, nor shall the County be obligated in any case to defend or prosecute any action at law or equity arising out of any such election or

contesting the validity of any such election; rather, the City shall be responsible for defending any court action brought to challenge the election.

SECTION 5. That the City Clerk is hereby authorized and directed to take all actions necessary to effectuate this Resolution (2013-004-B) and its intent for and on behalf of the City of Riverbank.

SECTION 6. That in all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

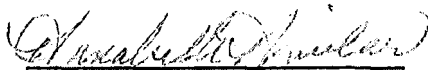
SECTION 7. That the City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the Registrar of Voters, Elections Division, of the County of Stanislaus upon its adoption.

SECTION 8. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.


PASSED, APPROVED, AND ADOPTED by the City Council of the City of Riverbank at a special meeting held on the 20th day of February, 2013; motioned by Councilmember Dotty Nygard, seconded by Vice Mayor Jeanine Tucker, and upon roll call was carried by the following vote of *4-0:

AYES: Councilmembers: Barber-Martinez, Nygard, Tucker, and Mayor O'Brien
NAYS: None
ABSENT: None
ABSTAIN: None

ATTEST:


Annabelle Aguilar, CMC
City Clerk

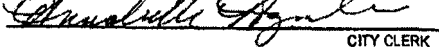
APPROVED:


Richard D. O'Brien
Mayor

*Councilmember vacancy

CERTIFICATION

I hereby certify the foregoing is a true and correct copy of the original document on file in the office of the City Clerk of the City of Riverbank.


CITY CLERK

DATED 02-21-2013

Terry Withrow - Riverbank AG / SOS Position

From: Lee Lundrigan
To: Chiesa, Vito; DeMartini, Jim; Monteith, Dick; O'Brien, William; With...
Date: 3/5/2013 8:42 AM
Subject: Riverbank AG / SOS Position
CC: Anderson, Robbie; Doering, John; Lean, Jana; Lean, Jana; McGrath, De...
Attachments: Attorney General FAQ regarding opinions.doc

Hello BOS Chair Chiesa and Board Members

Pursuant to a telephone inquiry from CEO Monica Nino yesterday regarding a possible request for an attorney general opinion by Riverbank, I contacted and personally spoke with the SOS Chief of Elections Jana Lean and Legal Counsel Robbie Anderson who indicated they had heard from Riverbank, but were not asked for an opinion. They informally indicated to me that they concur with the County position with regard to GC 36512(b) requiring not less than 114 days from the call for an election and the election date, as well as the requirement that there be an actual call for election and they do not agree with Riverbank's position.

In researching the possibility of a request for anyone requesting a potential AG opinion on this issue, I have attached information from their FAQ page as well as government code 12519 for your info. The AG does not give opinions to cities unless it is relating to a criminal matter. It takes 4-6 months for them to write an opinion.

Lee

Government Code 12519.

The Attorney General shall give his or her opinion in writing to any Member of the Legislature, the Governor, Lieutenant Governor, Secretary of State, Controller, Treasurer, State Lands Commission, Superintendent of Public Instruction, Insurance Commissioner, any state agency, and any county counsel, district attorney, or sheriff when requested, upon any question of law relating to their respective offices.

The Attorney General shall give his or her opinion in writing to a city prosecuting attorney when requested, upon any question of law relating to criminal matters.

Lee Lundrigan
Clerk Recorder & Registrar of Voters
Stanislaus County
1021 I Street, Suite 301
Modesto, CA 95354
lee.lundrigan@stancounty.com
209-525-5211 telephone
209-525-5800 fax

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209-525-5800 fax

<http://ag.ca.gov/opinions/faqs.php>

Attorney General Website FAQ Questions

Who may request an Attorney General's opinion?

The California Constitution and state law designate the state and local public officers who may request a legal opinion from the Attorney General on any question of law relating to their respective offices. However, this does not authorize a designated officer to request an opinion on a question posed by someone else. A request will be declined when it is apparent that the request is made on behalf of someone not authorized by Government Code section 12519. Those who may request an Attorney General's opinion are:

Constitutional Officers. Attorney General's opinions are provided to the state's constitutional officers - governor, lieutenant governor, secretary of state, controller, treasurer, state superintendent of public instruction, and insurance commissioner.

Legislators. Government Code section 12519 states that opinions shall be provided to "any Member of the Legislature." This language does not include legislative committees or their consultants.

State Agencies. Government Code section 12519 states that opinions shall be provided to "any state agency." The Attorney General has traditionally provided legal opinions to all state departments, agencies, boards and commissions, including those with staff counsel. However, requests for opinions from those having full time staff counsel must be accompanied by the legal analysis and conclusions of staff counsel with respect to the questions presented.

State Boards or Commissions. An opinion request from a board or commission must indicate that the request has been authorized by a majority vote of the board or commission. Opinion requests from individual members of a board or commission will be declined.

District Attorneys, County Counsels, and Sheriffs. All counties have access to Attorney General's opinions with respect to the laws relating to civil and criminal law. Requests from a sheriff must be accompanied by the legal analysis and conclusions of the district attorney or county counsel with respect to the questions presented.

City Prosecutors. Government Code section 12519 states that opinions shall be provided to "a city prosecuting attorney when requested, upon any question of law relating to criminal matters." This provision is limited to those city offices which actually prosecute misdemeanor cases arising in the city. It does not authorize opinions for city attorneys who do not prosecute criminal cases nor for city prosecutors on civil law questions.

Judges. The California Supreme Court and Court of Appeal are state agencies authorized to request opinions. Such requests should come from the court at the request of the chief justice or a presiding justice or, as is usually the case, be submitted by the Administrative Office of the Courts. However, Government Code section 12519 does not indicate whether other courts are state agencies authorized to request opinions. This ambiguity was resolved by Government Code section 27647 which authorizes the county counsel to represent the judges of the superior court in the county "in all matters and questions of law pertaining to any of such judge's duties." This evidences the Legislature's intent that advising trial judges is the responsibility of local public counsel.

How long does it take to write an Attorney General's opinion?

It generally takes four to six months to write an opinion.



STANISLAUS COUNTY COUNSEL
1010 Tenth Street, Suite 6400
Modesto, CA 95354
Phone: 209.525.6376
Fax: 209.525.4473

John P. Doering
County Counsel
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Assistant County Counsel

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Thomas E. Boze
Vicki F. de Castro
Deirdre E. McGrath
Robin L. McIver
Alice E. Mimms
Maria Elena R. Ratliff
Carrie M. Stephens
Wm. Dean Wright

March 8, 2013

Douglas L. White, Esquire
Churchwell White LLP
1201 K Street, Suite 710
Sacramento, CA 95814

Re: City of Riverbank Special Election; Request for Election Services

Dear Mr. White,

As you are aware, the Board of Supervisors declined the request by the City of Riverbank to permit the County Elections Official to provide election services for a June 4, 2013 special election to fill a vacancy on the Riverbank City Council. Please know that the County is available to assist the City in any way it can other than conducting the June 4th special election for Riverbank. Feel free to contact us if we can assist or if you have any questions.

Sincerely,



John P. Doering
County Counsel

JPD:

cc: Monica Nino, Chief Executive Officer
Lee Lundrigan, Clerk Recorder/Registrar of Voters
Christine Ferraro-Tallman, Clerk of the Board of Supervisors

V:\CO\jpd\Documents\LETTERS\13_0308 Ltr. re Riverbank Special Election.wpd

2013 MAR 11 A 10:37
BOARD OF SUPERVISORS

City of Riverbank Special Election 2013

What is Riverbank Requesting?

Approval to Provide Election Services for the City's 2013
Special Election to Fill a City Council Vacancy

Election Services

- (1) Prepare Ballot and Election Guides
- (2) Verify Voter Registration Information
- (3) Supply Election Day Materials to Precincts
- (4) Conduct Election
- (5) Canvass Ballots and Certify Results to City

How is the County Protected?

- (1) PAY: All Costs for the Election Services
- (2) DEFEND: Any Legal Challenge to the Special Election
- (3) INDEMNIFY: Any Liability for Conducting the Special Election

Why June 4, 2013?

Government Code section 36512(b), first sentence:

“If a vacancy occurs in an elective office . . . the council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy.”

Government Code section 36512(b),
second sentence:

“The special election shall be held on the next regularly established election date not less than 114 days from the call of the special election.”

CASE LAW:

City has “a clear legal duty to call a special election within [the time set by statute]”

Goodenough v. Superior Court (1971) 18 Cal.App.3d 692.

City’s “failure to comply with the time period, what it described as a ‘procedural detail[,] will not be permitted to defeat the clear purpose of the statute” to cause an early election. *Native American Sacred Site and Environmental Protection Association Nassepa v. City of San Juan Capistrano LLC* (2004) 120 Cal.App.4th 961.

LEGISLATIVE INTENT:

Government Code section 36512 was amended in 2010 by Assembly Bill 1668 (Knight) extending the time a council can fill a vacant position before being required to call a special election.

In 2009, Assembly Bill 18 rejected language allowing a council seat to be vacant for up to a year.

Clear legislative intent to have cities fill vacancies quickly.

Riverbank Timeline

December 10, 2012: Mayor Sworn In

January 28, 2013: City Council Hearing
- 127 Days before June 4, 2013

February 8, 2013: Deadline for City to Appoint
- 116 Days before June 4, 2013

February 10, 2013:
- 114 Days before June 4, 2013

February 11, 2013:
- 113 Days before June 4, 2013

**Under Every Scenario Riverbank Must
Hold the Special Election on
June 4, 2013**

Options

(1) Hire County to Provide Election Services

or

(2) Hire Private Company to Provide Election Services

Why the County?

Integrity of the Election Process

Continuity of Services

Experienced Election Professionals with
Knowledge of Riverbank