



DECEMBER 1, 2010
7:00 p.m. Meeting

ESCONDIDO CITY COUNCIL
Council Chambers
201 North Broadway, Escondido, CA 92025

CALL TO ORDER

- FLAG SALUTE:** Girl Scout Troop #4308
- NATIONAL ANTHEM:** Center Master Chorale
- INVOCATION:** Pastor Dennis Keating, Emanuel Faith Community Church
- ROLL CALL:** Abed, Daniels, Diaz, Waldron, Pfeiler

ORAL COMMUNICATIONS

CONSENT CALENDAR

1. **CERTIFICATION OF NOVEMBER 2010 ELECTION RESULTS** – Request City Council adopt a Resolution certifying the November 2, 2010 City of Escondido General Municipal Election and declaring the results thereof

Staff Recommendation: Approval (**City Clerk: Marsha Whalen**)

RESOLUTION NO. 2010-174

COMMENTS - OUTGOING OFFICIALS

2. **COMMENTS FROM OUTGOING COUNCIL MEMBERS:**
 - Dick Daniels
 - Lori Holt Pfeiler

INSTALLATION CEREMONIES

3. INSTALLATION OF OFFICERS: The Honorable Judge Richard E. Mills

- Sam Abed, Mayor
- Newly Elected Councilmembers

4. COMMENTS FROM NEWLY ELECTED OFFICERS

CURRENT BUSINESS

5. APPOINTMENT OF MAYOR PRO TEM

Staff Recommendation: None

6. **SELECTION PROCESS AND APPOINTMENT TO FILL VACANT CITY COUNCIL SEAT** – Discussion on options, process, and timing as well as possible appointment of an individual to fill the vacancy on the City Council

Staff Recommendation: None (**City Attorney: Jeffrey Epp; and City Clerk: Marsha Whalen**)

ORAL COMMUNICATIONS

ADJOURNMENT AND RECEPTION

CITY COUNCIL

For City Clerk's Use:

APPROVED DENIED

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 1
Date: December 1, 2010

TO: Honorable Mayor and Members of the City Council

FROM: Marsha Whalen, City Clerk

SUBJECT: Certification of November 2010 General Municipal Election Results

RECOMMENDATION:

That the City Council adopt Resolution No. 2010-174 certifying the November 2, 2010, City of Escondido General Municipal Election and declaring the results.

FISCAL ANALYSIS:

Funds for election expenses in the amount of \$70,000 were approved in the FY 2010-11 General Fund budget. Final costs should be available from the Registrar of Voters within the next 60-90 days.

BACKGROUND:

On July 14, 2010, the City Council adopted Resolution No. 2010-125 calling a General Municipal Election on November 2, 2010, to elect one (1) Mayor with a four-year term and two (2) Council Members with four-year terms; and Resolution No. 2010-126 requesting the San Diego County Board of Supervisors/Registrar of Voters to consolidate Escondido's Municipal Election with the Statewide General Election.

CONCLUSION:

In accordance with the California Elections Code, certification of the canvass of the returns from the General Municipal Election held on November 2, 2010, is to be presented to Council for action. The official certification from the Registrar of Voters is attached to the resolution as Exhibit "A."

Respectfully submitted,



Marsha Whalen, CMC
City Clerk

RESOLUTION NO. 2010-174

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, RECITING THE FACT OF THE GENERAL MUNICIPAL ELECTION HELD ON NOVEMBER 2, 2010, DECLARING THE RESULT AND SUCH OTHER MATTERS AS REQUIRED BY LAW

WHEREAS, a General Municipal Election was conducted in the City of Escondido, on Tuesday, November 2, 2010, as required by law; and

WHEREAS, a notice of the election was given in time, form and manner as provided by law; that candidates were nominated to fill the vacancies as provided by law; that voting precincts were properly established; that election officers were appointed and that in all respects said election was held and conducted and the votes were cast, received and canvassed and the returns made and declared in the time, form and manner as required by the provisions of the Elections Code of the State of California for the holding of elections in cities; and

WHEREAS, Resolution No. 2010-125 was adopted July 14, 2010, calling and giving notice of a General Municipal Election to be held on Tuesday, November 2, 2010; and

WHEREAS, Resolution No. 2010-126 was adopted July 14, 2010, requesting the Board of Supervisors of the County of San Diego and the Registrar of Voters to consolidate a General Municipal Election to be held on November 2, 2010, with the Statewide General Election to be held on the same date; and

WHEREAS, in accordance with the California Elections Code §15400, the Official Canvass of the Returns from the General Election held on November 2, 2010, is prepared by the Registrar of Voters and the results are declared by the City Council as to who was elected and as to each measure voted on at the election. The official certification from the Registrar of Voters is attached as Exhibit "A" and incorporated by this reference.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

SECTION 1. That there were 71 precincts established for the purpose of holding the General Municipal Election in the City of Escondido as established for the holding of state and county elections.

SECTION 2. That the regular General Municipal Election was held for the purpose of electing the following officers of the City as required by the laws relating to cities in the State of California, to wit:

- a. One Mayor for the full term of four (4) years;
- b. Two members of the City Council for the full terms of four (4) years

SECTION 3. That the number of ballots cast for two Council Members was 53,433; and that the whole number of ballots cast in said City for Mayor was 31,068.

SECTION 4. That the names of persons voted for at said election were as follows:

Mayor:	Sam Abed
	Joe Bologna
	Tom D'Agosta
	Dick Daniels
Member of City Council:	Richard C. Barron
	Jim Crone
	Jason Everitt
	Ed Gallo
	Carmen Miranda
	Lori Holt Pfeiler
	Marie Waldron

SECTION 5. The City Council, pursuant to Exhibit "A" does hereby declare and determine that:

- a. Sam Abed was elected as Mayor of said City for the full term of four (4) years;
- b. Marie Waldron was re-elected as a member of the City Council of said City for the full term of four (4) years; and
- c. Ed Gallo was elected as a member of the City Council of said City for the full term of four (4) years.

SECTION 6. That the City Clerk shall enter on the records of the City Council of said City a statement of the results of said election, showing:

- a. The whole number of votes cast in the City; and
- b. The names of the persons voted for.

SECTION 7. That the City Clerk shall immediately make and deliver to each of such persons so elected a Certificate of Election signed by the City Clerk and duly authenticated; that the City Clerk shall cause to be administered to each person elected, the Oath of Office prescribed in the State Constitution of the State of California, and shall have them subscribe thereto and file the same in the office of the City Clerk. Whereupon each and all of said persons so elected shall be inducted into the respective office to which they have been elected.

SECTION 8. That the City Clerk shall certify to the passage and adoption of the resolution; shall enter the same in the book of original resolutions of said City; and shall make a minute entry of the passage and adoption thereof in the records of the proceedings of the City Council of said City, in the minutes of the meeting at which the same is passed and adopted.

CERTIFICATE

STATE OF CALIFORNIA }
 } ss
COUNTY OF SAN DIEGO }

I, Deborah Seiler, Registrar of Voters for the County of San Diego, do hereby certify that I have conducted the official canvass of the returns from the Gubernatorial General Election held on November 2, 2010, in the County of San Diego. The following is a statement of the results showing the total number of ballots cast, the total number of votes for each candidate and the total number of votes in favor of and against each proposition.

Witness my hand and official seal this 30th day of November, 2010.



DEBORAH SEILER
Registrar of Voters



COUNTY OF SAN DIEGO
GUBERNATORIAL GENERAL ELECTION
 Tuesday, November 2, 2010
 Official Results (San Diego County Portion Only) Report #25

Date: 11/30/10
 Time: 16:46:31
 Page: 10 of 19

Registered Voters 1442161 - Cards Cast 926363 64.23%

Num. Report Precinct 2050 - Num. Reporting 2050 100.00%

CITY OF CARLSBAD		
TREASURER	Total	
Number of Precincts	78	
Precincts Reporting	78	100.0 %
Vote For	1	
Total Votes	30506	
JIM COMSTOCK	19730	64.68%
JOHN O'REILLY	10727	35.16%

CITY OF EL CAJON		
CITY COUNCIL	Total	
Number of Precincts	53	
Precincts Reporting	53	100.0 %
Vote For	1	
Total Votes	17977	
GARY KENDRICK	10707	59.56%
DUANE SWAINSTON	2906	16.17%
DRUMMOND MACOMBER	2420	13.46%
ANTHONY CHUISANO	1907	10.61%

CITY OF CHULA VISTA		
CITY COUNCIL - SEAT NO. 2	Total	
Number of Precincts	105	
Precincts Reporting	105	100.0 %
Vote For	1	
Total Votes	47814	
PATRICIA AGUILAR	25892	54.15%
LARRY BREITFELDER	21793	45.58%

CITY OF ENCINITAS		
CITY COUNCIL	Total	
Number of Precincts	43	
Precincts Reporting	43	100.0 %
Vote For	2	
Total Votes	38700	
KRISTIN D. GASPAR	11056	28.57%
TERESA BARTH	10167	26.27%
TONY KRANZ	8870	22.92%
DAN DALAGER	8549	22.09%

CITY OF CORONADO		
CITY COUNCIL	Total	
Number of Precincts	11	
Precincts Reporting	11	100.0 %
Vote For	2	
Total Votes	10542	
BARBARA DENNY	3786	35.91%
AL OVRUM, JR.	3375	32.01%
DOUG METZ	3360	31.87%

CITY OF ESCONDIDO		
MAYOR	Total	
Number of Precincts	71	
Precincts Reporting	71	100.0 %
Vote For	1	
Total Votes	31068	
SAM ABED	11743	37.80%
DICK DANIELS	9811	31.58%
TOM D' AGOSTA	7330	23.59%
JOE BOLOGNA	2132	6.86%

CITY OF DEL MAR		
CITY COUNCIL	Total	
Number of Precincts	5	
Precincts Reporting	5	100.0 %
Vote For	2	
Total Votes	2838	
TERRY SINNOTT	1371	48.31%
LEE HAYDU	1200	42.28%
JIM TUCKER	256	9.02%

CITY OF ESCONDIDO		
CITY COUNCIL	Total	
Number of Precincts	71	
Precincts Reporting	71	100.0 %
Vote For	2	
Total Votes	53433	
MARIE WALDRON	11977	22.41%
ED GALLO	9970	18.66%
LORI HOLT PFEILER	9927	18.58%
JIM CRONE	7196	13.47%
JASON EVERITT	5252	9.83%
CARMEN MIRANDA	4624	8.65%
RICHARD C. BARRON	4448	8.32%

CITY OF EL CAJON		
MAYOR	Total	
Number of Precincts	53	
Precincts Reporting	53	100.0 %
Vote For	1	
Total Votes	19951	
MARK LEWIS	8206	41.13%
TODD C. MOORE	6504	32.60%
JOHN "MIKE" GARCIA	3405	17.07%
DARRIN MROZ	1230	6.17%
JOHNNY P. MINARICK	583	2.92%



CITY COUNCIL

For City Clerk's Use:

APPROVED DENIED

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 6

Date: December 1, 2010

TO: Honorable Mayor and Members of the City Council

FROM: Marsha Whalen, City Clerk and Jeffrey Epp, City Attorney

SUBJECT: City Council Vacancy

RECOMMENDATION:

Consider and take action on the procedures related to the appointment or make such appointment.

FISCAL ANALYSIS:

Approximately \$500-\$1,000 to cover costs associated with advertisements and miscellaneous expenses. Costs will be covered from the 2010 election budget.

BACKGROUND:

In the regular municipal election on November 2, 2010, Council member Sam Abed received a majority of votes for the elective office of Mayor of the City of Escondido. Since he is an incumbent Council member, it is anticipated that he will resign the office of Council member and accept the office of Mayor on December 1, 2010, when elective officers will be administered the oath of office and commence their terms.

Applicable Law

A vacancy in an elective office can occur in a number of ways, including resignation. In order for a resignation to be effective, it must be in writing and filed with the City Clerk. Gov't Code section 1750(e). The resignation takes effect by its terms. It need not be "accepted" by anyone to be effective.

The California Government Code provides the required steps that must be taken when a vacancy occurs. Within 30 days of a vacancy¹, the City Council must fill the vacancy by appointment or by calling a special election, to be held on the next established election date not later than 114 days thereafter. Gov't Code section 36512; 34902(a). The successor serves from the date of appointment (or the Tuesday following the election, if an election is held) until the expiration of the predecessor's term.

¹ AB (1668) (Knight) amended Gov't Code section 36512, to allow 60 days for filling a vacancy in a city elective office. Although this bill has been adopted and has been signed by the Governor, it does not take effect until January 1, 2011.

In general law cities, the City Council has broad discretion to choose the method for filling the vacancy. Section 36512 does not contain a detailed process, but instead gives the City Council discretion to choose either appointment or special election, and provides a 30-day deadline for making that decision from the time of the vacancy. Section 36512 also specifies that if a special election is chosen, the special election must be held not less than 114 days from the call for the special election.

In the present case, the vacancy is anticipated to occur on December 1, 2010, at the time Councilmember Abed resigns his position as a Council member and assumes the elective office of Mayor. Thus, the City Council will have until December 30, 2010, to make an appointment or adopt the necessary resolutions to call for a special election.

Eligibility

In order to be eligible to hold a municipal office, a person must be a resident of the city and a registered voter of the city at the time nomination papers are issued. Gov't Code sections 34882, 34904.

Process

Most cities fill mayoral and city council vacancies by appointment, rather than special election. This is due to the high cost of holding a special election.² In those cities using an appointment process, the most common practice is to direct the City Clerk to put out an announcement to the public that the position will be filled by appointment, and inviting interested persons to apply for the position.

On Sunday, November 14 and Thursday, November 18, 2010, the City Clerk published a notice of the vacancy and invited interested persons to apply by completing an application and providing answers to a supplemental questionnaire. This notice was published in the North County Times and placed on the local government channel 19. It was also announced at the November 10, 2010 City Council meeting. The application form and the invitation to apply was placed on the City's website on Monday, November 15, 2010 at www.ci.escondido.ca.us/news.

Applicants were advised to submit all information no later than November 24, 2010 to enable the City Council to have time to consider the materials prior to December 1, 2010.

As a result of this process, 26 applications and supporting material have been received and all materials have been placed in the City Clerk's office for public inspection, and copies made available to all Council Members.

² For example, the Registrar of Voters provided Poway (population approximately 50,000 with 29,000 registered voters) an estimate of approximately \$250,000 for a special election. Our City Clerk has indicated that Registrar estimates for a similar election in Escondido would be \$465,000 to \$485,000.

Voting Requirements

The Escondido Municipal Code does not have specific voting requirements for City Council decisions. Thus, state law applies and the City Council may generally take action by a vote of a majority of a quorum (Civil Code section 12, Code of Civil Procedure section 15). In the unlikely event the City Council wishes to adopt an ordinance or resolution, three votes will be required pursuant to Government Code section 36936 (requiring a majority vote of the total membership of the city council for resolutions, orders for the payment of money, and ordinances).

It should be noted that the Brown Act does not allow for the City Council to hold a closed session on the subject of filling a Mayor or City Council vacancy. Although closed sessions are allowed for the appointment or evaluation of a public employee pursuant to Gov't Code section 54957, "employee" does not include an elected official or member of the legislative body. Gov't Code section 54957.

Additionally, when the public action on filling the vacancy is taken, it should be noted that the Brown Act also prohibits the use of secret ballots. Gov't Code section 54953(a).

The most recent point in Escondido history when the City Council was required to fill a vacancy occurred in 1998, when Lori Pfeiler was elected Mayor and the City Council had to select a replacement to fill the vacancy left in the Council term of office. In that circumstance, the City Council solicited applications and requested applicants to fill out a short questionnaire and address certain specific questions. Some applicants were eliminated by consensus, and the City Council then considered the remaining list of approximately 19 applicants. In that particular case, 3 separate motions on 3 different candidates were considered and failed either due to a lack of a second or lack of a majority vote. Applicant Jerry Kaufman received a majority vote on the 4th motion made, and was thereby selected. None of the remaining candidates were the subject of either a motion for appointment or a vote.

Respectfully submitted,



Jeffrey Epp
City Attorney



Marsha Whalen, CMC
City Clerk