



NOTICE AND CALL OF A
CITY OF RIVERBANK
SPECIAL CITY COUNCIL MEETING



City Hall Council Chambers
6707 Third Street • Riverbank • CA 95367

AGENDA

WEDNESDAY, FEBRUARY 20, 2013 – 5:00 P.M.

CALL TO ORDER: Mayor Richard O'Brien

ROLL CALL: Mayor Richard O'Brien
Vice Mayor Jeanine Tucker
Councilmember Darlene Barber-Martinez
Councilmember Dotty Nygard
Councilmember (vacant)

CONFLICT OF INTEREST

Council Members and Staff who would have a direct Conflict of Interest on any scheduled agenda item to be considered are to declare their conflict.

1. PUBLIC BUSINESS FROM THE FLOOR (No Action Can Be Taken)

Pursuant to Government Code 54954.3, in reference to a special meeting, the public has the opportunity to address the City Council only on items appearing on this special meeting notice. Individual comments are limited to a **maximum of 5 minutes** per person and each person may speak once during this time. Time cannot be yielded to another person.

2. PRESENTATION

Item 2.1: Introduction of Steve Churchwell, Attorney at Law and Partner of Churchwell White LLP

3. NEW BUSINESS

Item 3.1: Consideration for Adoption of Amendments to Resolution 2013-004 Clarifying Matters Relating to the Calling and Holding of a June 4, 2013, Special Municipal Election to fill a Councilmember Vacancy.

ADJOURNMENT

AFFIDAVIT OF POSTING

I hereby certify under penalty of perjury, under the laws of the State of California, that the foregoing agenda was posted on the City Hall bulletin board 24 hours prior to the meeting.

Dated this 19th day of February, 2013
Annabelle Aguilar, CMC, City Clerk

Notice Regarding Americans with Disabilities Act:

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office at (209) 863-7122. Notification 48-hours before the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting [28 CFR 35.102-35.104 ADA Title II].

Notice Regarding Non-English Speakers:

Pursuant to California Constitution Article III, Section IV, establishing English as the official language for the State of California, and in accordance with California Code of Civil Procedures Section 185, which requires proceedings before any State Court to be in English, notice is hereby given that all proceedings before the City of Riverbank City Council shall be in English and anyone wishing to address the Council is required to have a translator present who will take an oath to make an accurate translation from any language not English into the English language.

General Information: The Riverbank City Council meets in the Council Chambers on the second and fourth Mondays of each month at 6:00 p.m., and at 12:00 Noon for every first meeting of the month of each quarter (January, April, July, and October); unless otherwise noticed.

Council Agendas: The City Council agenda is now available for public review at the City's website at www.riverbank.org and City Clerk's Office, 6707 Third Street, Riverbank, California on the Friday, prior to the scheduled meeting. Copies and/or subscriptions can be purchased for a nominal fee through the City Clerk's Office.

Public Hearings: In general, a public hearing is an open consideration within a regular meeting of the City Council, for which special notice has been given and may be required. During a specified portion of the hearing, any resident or concerned individual is invited to present protests or offer support for the subject under consideration.

Questions: Contact the City Clerk at (209) 863-7122 or aaguilar@riverbank.org

SPECIAL RIVERBANK CITY COUNCIL AGENDA ITEM NO. 2.1

SECTION 2: PRESENTATION

Meeting Date:	February 20, 2013
Subject:	Introduction of Steve Churchwell of Churchwell White
From:	Jill Anderson, City Manager
Submitted by:	Luanne Bain, Administrative Assistant

RECOMMENDATION

Welcome Mr. Steve Churchwell of Churchwell White Law Group.

SUMMARY

City Attorney Doug White recently partnered with Steve Churchwell to form the new Law Group, Churchwell White. Mr. Churchwell is in attendance this evening to introduce himself to Council.

FINANCIAL IMPACT

No financial impact.

ATTACHMENT

- 1) Steve Churchwell Biography

Steven G. Churchwell

Partner

Since 1982, Steve Churchwell has assisted clients in charting a successful course through the challenging waters of California government and politics. He represents corporations, associations, Indian tribes and government agencies in regulatory matters, political law compliance and enforcement issues, and related litigation.

Steve was formerly a partner at DLA Piper LLP (US) and also has served as General Counsel for the Fair Political Practices Commission, Chief Counsel for the Cal-OSHA Appeals Board, and Counsel at the Office of Administrative Law.

Mr. Churchwell has worked on issues in many areas of public policy, including conflicts of interest, education, energy, government contracts, healthcare, infrastructure projects, internal investigations, as well as regulation of elections and PACs.

He has been rated AV[®] by Martindale-Hubbell and was named a Northern California Super Lawyer. Mr. Churchwell serves on the Executive Committee of the California Political Attorneys Association and is a member of the Methodology Advisory Panel of the Ethisphere Institute.

Mr. Churchwell's articles have been published in *Intellectual Property Law Review*, *Pepperdine Law Review*, *Tennessee Law Review* and *Criminal Law Bulletin*.

Steve was one of 10 lawyers chosen by the *National Law Journal* for its "2013 Pro Bono Hot List" for his work on juvenile justice issues. Mr. Churchwell also won the 2009 National Pro Bono Award at DLA Piper for his work in South Africa with Zimbabwean women refugees.

Steve is a graduate of Vanderbilt University (BA 1979) and the University of Tennessee College of Law (JD 1982), where he served as Articles Editor of the *Law Review*.

SPECIAL RIVERBANK CITY COUNCIL AGENDA ITEM NO. 3.1

SECTION 3: NEW BUSINESS

Meeting Date: February 20, 2013

Subject: Consideration **for** Adoption of Amendments to Resolution No. 2013-004 Clarifying Matters Relating to the Calling and Holding of a June 4, 2013, Special Municipal Election to fill a Councilmember Vacancy

From: Jill Anderson, City Manager

Submitted by: Annabelle Aguilar, CMC, City Clerk

RECOMMENDATION

It is recommended that the City Council adopt Resolutions No. 2013-004-A, and 2013-004-B amending Resolution No. 2013-004 to clarify City Council's intent to call and hold a June 4, 2013 special municipal election; and to clarify the City's request for the rendering of specified election services from the Stanislaus County Elections Division; respectively.

SUMMARY

A vacant Councilmember seat currently exists due to the November, 2012 election of former Councilmember Richard O'Brien to the Mayoral Seat. The provisions of Government Code 36512 govern the filling of an elected office vacancy by either making an appointment or calling for a special election within a 60-day deadline expiring on February 8, 2013. 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.

On each occasion of consideration, consensus was not reached on the process of making an appointment; nor did the City Council adopt the resolution to call a special election. As a result, the City Council allowed the 60-day time period to expire thereby causing a special election to be called on the next regularly established election date, which is Tuesday, June 4, 2013.

On February 11, staff presented Resolution No. 2013-004 for the City Council's consideration that did not adequately convey that the election was called on February 9, 2013 when the 60-day time period to appoint an individual to the City Council vacancy expired. The City Council adopted Resolution No. 2013-004 on February 11, 2013 and the following day a certified copy was submitted to the County Registrar of Voters. The County Clerk Recorder/Registrar of Voters, understandably, interpreted that the call for

the election took place on February 11, not February 9. The significance is that February 11 is 113 days prior to the June 4, 2013 regularly scheduled election; and therefore, does not meet the 114 day requirement. February 9 is 115 days prior to the June 4, 2013 regularly scheduled election and meets the legal requirement to have the special election to fill the City Council vacancy placed before the voters on that date.

To clarify the previously adopted resolution and address the County Clerk Recorder/Registrar of Voters' concerns, amendments to Resolution No. 2013-004 have been prepared to clarify when and how the election was called; and to clarify the City's request for specified election services from the County's Elections Division. In the event that the County is not able to provide election services, the City can consider contracting with another agency/firm that is able to provide election services to municipalities.

FINANCIAL IMPACT

Based on an estimated range of registered voters and approximate cost per voter, it is anticipated a special election would cost approximately \$57,000.00. This amount was added to the 2012-2013 Budget at the midyear review on February 11, 2013.

ATTACHMENT

1. Resolution No. 2013-004
2. Resolutions No. 2013-004-A and 2013-004-B

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.

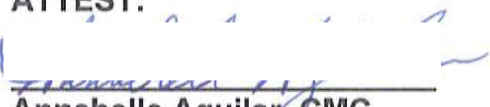
SECTION 10. That the City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the Registrar of Voters, Elections Division of the County of Stanislaus upon its adoption.

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 Vice Mayor Jeanine Tucker, seconded by Councilmember Darlene Barber-Martinez, and upon roll call was carried by the following vote of *4-0:

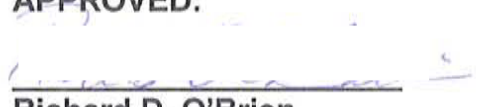
AYES: Councilmembers: Barber-Martinez, Nygard, Tucker, and Mayor O'Brien
NAYS: None
ABSENT: None
ABSTAIN: None

ATTEST:



Annabelle Aguilar, CMC
City Clerk

APPROVED:



Richard D. O'Brien
Mayor

*Councilmember vacancy

CITY OF RIVERBANK

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 _____, seconded by _____, 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

*Councilmember vacancy

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, canvas, 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 _____, seconded by _____, 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

*Councilmember vacancy