To: Honorable Mayor and Members of the City Council  
From: Phil Kamlarz, City Manager  
Subject: Emergency Item for July 15, 2008 Agenda

Attached please find an emergency item that I am recommending the City Council add to the agenda for the July 15, 2008 City Council meeting. This item addresses the process for filling the unfortunately now vacant City Council seat in District 4. As the item notes, a two-thirds vote is required to add this item to the agenda. Copies of the item will also be distributed at the meeting this evening.
To: Honorable Mayor and Members of the City Council
From: Phil Kamlarz, City Manager
Submitted by: Christine Daniel, Deputy City Manager, City Manager’s Office
Subject: EMERGENCY ITEM; Vacancy in the Office of Council Member for District 4

RECOMMENDATION
(1) Add this item to the Agenda pursuant to Government Code Section 54954.2(b)(2) because the issues discussed herein became known after the agenda was posted and because, for the reasons discussed below, there is a need to take immediate action. A two-thirds vote is required for this action.

(2) Adopt a Resolution (a) establishing the general municipal election of November 4, 2008 as the election at which the vacancy in the office of council member representing District 4 will be filled, (b) opening the nomination period for that office on July 16, 2008, and (c) amending Resolution No. 64,080-N.S. (call of the election) to add the election for council member for District 4 to the November 4, 2008 general municipal election, including requesting the Alameda County Board of Supervisors to consolidate this election with the Presidential general election.

FISCAL IMPACTS OF RECOMMENDATION
An additional item on the November 4, 2008 ballot for the office of councilmember in District 4 will add approximately $15,000 to the costs of the 2008 general municipal election.

CURRENT SITUATION AND ITS EFFECTS
On July 13, 2008 the City of Berkeley lost the longtime representative of District 4, Council Member Dona Spring. Council Member Spring passed away after many years of dedicated service to the Berkeley community. She had served on the Council since 1993 and prior to that had served on the Alameda County Democratic Central Committee and the Green Party Council. During her service on the Council she also served on the Alameda County Recycling Board and was the Berkeley Vice Mayor in 1994. She was a passionate and committed representative for her constituents and the Berkeley community as a whole. She was re-elected in 2006 and her term on the Council was not due to expire until November 30, 2010. This report has the sad task of recommending a process for filling the vacancy that her passing has created on the Council.
Council Member Spring’s passing occurred after the posting of the Agenda for the July 15, 2008 meeting. Pursuant to Government Code Section 54954,2(b)(2), staff recommends that this item be added to the agenda for the July 15, 2008 Council meeting as “an item on which there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted.” As noted above, adding the item to the agenda requires a two-thirds vote. Given the timing of the electoral process for November, 2008 and the need for potential candidates for the office of council member for District 4 to begin preparing for the election, including submitting nomination papers, staff recommends that the Council take the actions recommended in this report.

BACKGROUND
The Charter of the City of Berkeley has specific provisions related to filling a vacancy in the office of council member. Specifically, Article V, Section 12(1)(b) of the Charter provides as follows:

(1) If a vacancy shall occur in the office of Mayor or Councilmember…

(b) If the unexpired term is for one year or more, the vacancy shall be filled by special election, to be called by the Council within ten days after the occurrence of the vacancy and to be held not less than 60 nor more than 90 days after the date of the order; provided, however, if any regular statewide or general municipal election is to be held in the City not more than 180 days nor less than 80 days from the date of the occurrence of the vacancy in the case of a regular statewide election, or not more than 180 days nor less than 60 days from the date of the occurrence of the vacancy in the case of a general municipal election, then the vacancy shall not be filled by special election, but at said regularly occurring election.

(Emphasis added.)

The 2008 general municipal election is 114 days from the date of Council Member Spring’s passing. Thus, the operative provision of Section 12(1)(b) is the last clause of the last sentence, namely that the vacancy shall be filled at the regularly occurring general municipal election on November 4, 2008.

Additionally, please note that Article III, Section 4(b) of the Charter provides that, “A special municipal election may be held to fill any vacancy in accordance with Article V, Section 12 of this Charter; provided however, if the provisions of Article V, Section 12 would require such election to be held between the 10th day of June and the 10th day of October, then such election shall be held on the following first Tuesday after the first Monday in November.” (Emphasis added.)
Based on these Charter provisions, staff recommends that the Council adopt a resolution establishing the November 4, 2008 general municipal election as the election at which the vacancy in the office of council member representing District 4 will be filled.

The nomination period for the other Council seats at issue and the position of Mayor in the November election opened on July 14, 2008. Staff thus also recommends that the Council open the nomination period for council member for District 4 effective July 16, 2008.

Finally, on June 10, 2008 the City Council approved Resolution No. 64,080-N.S. which called the 2008 general municipal election and requested that the Alameda County Board of Supervisors consolidate those matters with the Presidential general election. Staff thus recommends that Resolution No. 64, 080-N.S. be amended to add that the offices to be voted upon at the general municipal election shall include: one council member seat, District 4, term ending November 30, 2010, and to request that the County consolidate this election with the Presidential general election.

RATIONALE FOR RECOMMENDATION
The recommended actions are consistent with Article V, Section 12(1)(b) and Article III, Section 4(b) of the Charter of the City of Berkeley.

ALTERNATIVE ACTIONS CONSIDERED
None

CONTACT PERSON
Christine Daniel, Deputy City Manager, City Manager's Office, 510-981-7000

Attachments:
1: Resolution
RESOLUTION NO. ##,###-N.S.

ELECTION TO FILL VACANCY IN THE OFFICE OF COUNCIL MEMBER, DISTRICT 4

WHEREAS, Council Member Dona Spring, representing District 4, passed away on July 13, 2008 after many years of dedicated service to the Berkeley community; and

WHEREAS, Council Member Dona Spring was re-elected in November 2006 and her current term was not due to expire until November 30, 2010; and

WHEREAS, Article V, Section 12(1)(b) of the Charter of the City of Berkeley provides that a vacancy in the office of council member shall be filled by election at the next general municipal election if “…any regular statewide or general municipal election is to be held in the City not more than 180 days nor less than 80 days from the date of the occurrence of the vacancy in the case of a regular statewide election, or not more than 180 days nor less than 60 days from the date of the occurrence of the vacancy in the case of a general municipal election, then the vacancy shall not be filled by special election, but at said regularly occurring election”; and

WHEREAS, the next general municipal election is November 4, 2008 which is 114 days from the date of Council Member Spring’s passing; and

WHEREAS, on June 10, 2008 the City Council adopted Resolution No. 64,080-N.S. calling the 2008 general municipal election and requesting that the Alameda County Board of Supervisors consolidate this election with the Presidential general election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the vacancy in the office of council member for District 4 shall be filled at the November 4, 2008 general municipal election.

BE IT FURTHER RESOLVED, that the nomination period for the office of council member for District 4 shall open on July 16, 2008.

BE IT FURTHER RESOLVED, that Resolution No. 64,080-N.S. is hereby amended to (1) add that the offices to be voted upon at the General Municipal Election shall include: one council member seat, District 4, term ending November 30, 2010; and (2) to request that the Alameda County Board of Supervisors consolidate this election for council member in District 4 with the Presidential general election.