

Cole can't be given leave of absence

PINOLE: City attorney says councilman going off to boot camp can resign, face recall or have stand-in appointed

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By Tom Lochner

Pinole Councilman David Cole, who will leave for Army boot camp this week, could have some sway over the future makeup of the council, if and when he resigns.

Assistant City Attorney Inga Lintvedt, in an opinion made public on Friday, said the council, under existing laws, cannot grant Cole a leave of absence as he had requested earlier last week. The council can, however, appoint an interim replacement for Cole during his absence, Lintvedt said.

As a practical matter, Cole's continued service on the council would be difficult at best, given that he will likely be outside the area for at least two years. Moreover, he came under fire for several recent absences at council meetings that occurred before he announced he had joined the Army.

If Cole opts to resign, the timing could determine whether the council or the voters pick his successor.

Cole is one of three Pinole council members who are the subjects of a recall drive over their vote not to renew the contract of former City Manager Belinda Espinosa, and over what their detractors call a "suspect" relationship with a restaurateur who failed to make payments for nearly two years on several hundred thousand dollars in city loans. The other recall targets are Mayor Maria Alegria and Councilman Stephen Tilton.

Cole has enlisted for an eight-year stint in the Army and will be in basic training in Missouri for the next 10 weeks. After a few days of vacation, he is expected to undergo several months of advanced training. His term of enlistment includes periods of active and reserve duty. He will be unable to serve in his elected capacity for at least two years, Lintvedt said.

Under the Military and Veterans Code, city officials on active duty in the armed forces can go back to their office upon discharge, unless their term of election has expired — or been cut short by a successful recall effort.

Cole's term of office runs through November 2010.

Cole told the Times last week that he would wait until he completes basic training to decide whether or not to resign. But that was before Lintvedt found that the council cannot give Cole a leave of absence. Calls left on Cole's voice mail Sunday were not returned.

If Cole resigns before the petition to recall him is filed, the council can appoint someone to serve out the balance of his term, Lintvedt said. If Cole resigns after the

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recall petition is filed, the council can appoint an interim replacement until a successor is elected, Lintvedt said.

Recall sponsors have until around Sept. 20 to gather and file with the city clerk about 2,250 valid signatures representing 25 percent of the city's almost 9,000 registered voters.

Jeff Rubin, a recall spokesman, said he expects to announce in front of City Hall before Tuesday's City Council meeting that his group has gathered the necessary number of signatures for all three recall targets. However, the signature drive will continue for about two more weeks, he said.

The last vacancy on the Pinole City Council during an unfinished term of office occurred in October 1999, when Councilwoman Gretchen Mariotti died. Later that month, the City Council voted unanimously to call for a special election rather than to appoint someone to Mariotti's unfinished term, which ran for three more years, to November 2002.

At Mariotti's death, the council included current members Alegria, Mary Horton and Peter Murray.

In March 2000, Cole won Mariotti's seat in a special election. He was reelected to the council in 2002 and again last November.

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