



Memorandum

**TO: HONORABLE MAYOR AND
CITY COUNCIL**

FROM: TONI J. TABER, CMC

**SUBJECT: FILLING VACANCY BY
SPECIAL ELECTIONS**

DATE: 11/5/2024

INFORMATION

On November 5, 2024, Councilmember Omar Torres, District 3, submitted his resignation from his seat effective November 27, 2024. The City Council will need to decide how to fill the vacant seat. The choices, history, and costs are outlined in this memo.

HISTORY

The City Charter provides the options the City Council can take when filling a vacancy and allows for the council to initiate the appointment or election process in anticipation of the vacancy which would allow the members who are vacating the position to participate in the process (City Charter section 410 (d)). Those options are:

- a) **APPOINTMENT.** If the vacancy is filled by appointment, the appointment shall be effective until the end of the unexpired term of office or January 1st following the next Regular Municipal Election after the appointment, which ever first occurs.
- b) **ELECTION.** If the vacancy is to be filled by election, the election will be for the entire unexpired term of the office. The election will either be conducted at a Regular Municipal Election, a General Election or at a Special Municipal Election, as determined by the Council. The election will be conducted in accordance with Section 1600.
- c) **INTERIM APPOINTMENT.** If a vacant office is to be filled by election, the Council may make an interim appointment to fill the office until a candidate has been duly elected and the results of the election have been officially certified. A person who is appointed during the interim period shall meet the eligibility requirements to hold office under Section 404 of this Charter.

Previous City Council vacancies were addressed as follows:

- In 1994, Kathryn Cole was recalled, and a special election was not held to replace her. Alice Woody was appointed by Council to fill the remainder of her term. Councilmember Woody was subsequently elected to a full term in 1996 and did not seek reelection in 2000.

- In 1995, Joe Head resigned his position as Council District 10 representative. A special primary election was held in March 1995 with 8,926 ballots cast for a turnout of 21.1%, and a special runoff election was held in May 1995 with 9,961 ballots cast for a turnout of 22.8%. Pat Dando won with 5,582 votes.
- In 2000, Manny Diaz was elected to California State Assembly leaving a vacancy in District 5. A special election was held in March 2001 where Nora Campos was elected with 3,204 ballots cast with a turnout of 16.4%.
- In 2005, Terry Gregory resigned from Council District 7. A special primary election was held on June 7, 2005 with a total of 7,937 ballots cast for a 27.3% turnout. A special runoff election was held on September 13, 2005 when Maddison Nguyen was elected with 9,020 total ballots cast and a 30.66% turnout. Madison Nguyen won with 5,603 votes.
- In 2006, Ken Yeager, District 6, was elected to the County Board of Supervisors, and Chuck Reed, District 4, was elected to Mayor. A special primary election was held on March 6, 2007 for the District 6 and 4 seats. District 6 was decided in a single election with 12,115 ballots cast for a 31.8% turnout and Pierluigi Oliverio was elected with 7,020 of those votes. The District 4 election received 9,601 ballots cast in the primary for a 27.4% turnout, and the special runoff election was decided with 11,283 ballots cast and a 32.60% turnout, with Kansen Chu winning the election with 7,247 votes.
- In November 2014, then-Councilmember Kansen Chu was elected to the California State Assembly leaving his office vacant. On December 2, 2014, the City Council called for a special election to be held on April 7, 2015 with a runoff on June 23, 2015 ([Resolution 77225](#)). One of the options discussed at that meeting was to leave the office vacant pending the election. It was suggested the Mayor could appoint a member of his staff to oversee the staff in the vacant district. While another argument was for the interim appointment of a Councilmember so that the Council District would not be without voting representation on the Council until certification occurred in August 2015. During the discussion, there was concern that an appointed person would have an advantage in running for office. On December 19, 2014, after receiving a total of five applications, the City Council appointed Margie Matthews as the interim Councilmember to serve until there was an elected representative. Ms. Matthews had served as the Councilmember for District 4 from 1993-2000, and to ensure compliance with CalPERS requirements for State retirees, volunteered to serve with no pay. Ms. Matthews also pledged not to run for the vacant District 4 seat. At the time, City Attorney Rick Doyle noted that any pledge not to run for a vacant seat is legally unenforceable. Ms. Matthews was appointed with a vote of 6-0-3-1-1. (Absent: Campos, Kalra, Rocha. Abstain: Oliverio. Vacant: District 4).

Subsequently, the elections were held in April and June for a cost of \$701,601 for the special primary, and \$496,594 for the special runoff. A total of 10,452 ballots were cast in April 2015 for a turnout of 25.82%. The top candidate, Tim Orozco, received 2,241 ballots, with the runner up, Manh Nguyen, receiving 1,943. Ballots cast in June 2015 totaled 11,040 for a turnout of 27.07%. Manh Nguyen was elected with 6,111 votes.

- In 2022, then-Councilmembers Matt Mahan (D10) and Sylvia Arenas (D8) were elected to other offices leaving vacancies in those districts. On November 16, 2022, Rules and Open Government Committee discussed and took action on a memorandum submitted by Councilmembers Jimenez and Cohen regarding the anticipated vacancies for Districts 8 and 10 due to the expected results of the November 8, 2022 election. Staff was directed to prepare an informational memorandum outlining the process for filling Council vacancies (appointment or election), and to schedule a Special Meeting.

On December 5, 2022, the City Council voted to: (1) Implement a process to make interim appointments that includes the following: (a) Shortly after the special meeting on December 5, 2022, initiate the recruiting process for the expected Council vacancies in Districts 8 and 10, including the release of an application for interested candidates. The application should be similar to that for the Planning Commission, along with City Attorney review for potential conflicts of interest and include the following questions: (i) Why are you interested in representing this district on the City Council? (ii) Please list your past community experience and other qualifications for the role. (iii) Do you plan to run for the full term of this seat? (iv) What do you think is the biggest challenge the city faces? What is the biggest challenge specific to the council district you aspire to be appointed to represent? (b) Provide a minimum of 3 weeks for candidates to file their applications; (c) Schedule a special Council meeting before the end of January 2023 for the Council to interview qualified candidates and make the appointments; (d) The final appointments shall require a 2/3 vote of the council for approval. (2) Direct the City Manager to work with outgoing Councilmembers in assigning staff to continue constituent services in their offices during the recruitment process. 3. The appointment will stand until a candidate has been duly elected in the next regularly scheduled election and the results have been officially certified. (7-4-0. Noes: Foley, Mahan, Jones, Liccardo.)

On December 8, 2022, the City Clerk posted the application to the website. That same day, the City Clerk distributed the application to a contact list of individuals, organizations, and to the City Council. On December 14, 2022, the City's Twitter, NextDoor, and LinkedIn accounts posted the image included within this memorandum with a link to the applications. Additionally, an application advertisement was published on December 20, 2022 via Facebook and Instagram. The same image was also provided to Council Districts 8 and 10 for their direct use in

recruitment. The list of applicants was posted and updated each business day, along with a description of the process of selecting candidates for interview. The application period ended at 11:59 on January 2, 2023.

On January 03, 2023, the City Clerk transmitted the applications along with the Conflict of Interest memorandum provided by the City Attorney to the City Councilmembers. Each Councilmember was asked to select 4 applicants for District 8 to bring forward for the interview process. Those applicants receiving four or more indications of interest were invited to interview.

On January 24, 2023, the Council met to appoint members for Council District 8, and on January 26, 2023 to appoint for Council District 10.

HISTORIC DATA FOR DISTRICT 4 REFLECTING SPECIAL ELECTION TURNOUT

Election	Total	Ballots Cast	Citywide	Type of Election
11/3/2020	54,450	39,293	72.16%	Presidential
3/3/2020	49,691	20,330	40.91%	Presidential Primary
6/7/2016	39,703	17,350	43.70%	Presidential Primary
6/23/2015	40,782	11,040	27.07%	Special-D4 Only
4/21/2015	40,476	10,452	25.82%	Special Primary- D4 Only
6/5/2012	42,836	13,012	30.38%	Presidential Primary
6/3/2008	37,169	10,590	28.49%	Presidential Primary
6/5/2007	34,595	11,283	32.61%	Special-D4 Only
3/6/2007	35,019	9,601	27.42%	Special Primary-D4 Only
3/4/2004	39,325	13,383	34.03%	Presidential Primary

This table is provided to illustrate voter turnout in a district in which a special election was held. There has not been a recent special election in another district.

Costs of Election

The estimated cost of a Special Stand-alone Election for San José Council District 3 as provided by the Santa Clara County Registrar of Voters on October 31, 2024 is between \$2,008,816 - \$3,264,326 by the jurisdiction calling the election. In contrast, primary or general elections are a shared-cost election, where more participating districts and ballot types result in a broader distribution of costs. These figures are estimates based on projected registration and available information and are subject to change based on final billing.

2025 Vote Center and Mail Ballot Special Stand-alone Election	Low End	High End
Registered voters (registration as of 10/28/24)	45,658	45,658
Projected registered voters (115% of current registration)	52,507	52,507
Estimated Costs	<u>\$ 2,008,816</u>	<u>\$ 3,264,326</u>

The costs of a special election have not been included in the City Clerk’s budget for FY24-25, so funds would need to be appropriated from the General Fund during the Midyear Budget adjustment.

Timeline

While there is some flexibility in the timeline, this is one potential election date. All due dates on the timeline are based on Election date. For example, the nomination period begins E-113 and ends E-88 (Election minus 88 days).

Date	Action Item
20-Dec-24	Election Official to Publish Notice of Election--Candidates
6-Jan-25	Filing Period for Nomination Papers and Candidate's Statements Opens
31-Jan-25	Filing Period for Nomination Papers and Candidate's Statements Closes
8-Apr-25	Last Day to Mail Voter Information Guides and Polling Place Notices
14-Apr-25	Last day to Register to Vote
22-Apr-25	Last day for Election Official to Publish Notice of Nominees
29-Apr-25	Election Day
29-May-25	Last Day to Declare Results
5-Jun-25	Certification of Election Results at City Council
15-Jul-25	Runoff Election
14-Aug-25	ROV Certifies results