

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: NORA FRIMANN
City Attorney

SUBJECT: Filling Council Vacancy

DATE: November 19, 2024

REASON FOR REPLACEMENT

This Replacement Memorandum corrects the date of the next Regular Municipal Election which will be held on the same date that the state of California holds its direct primary election on June 2, 2026.

INFORMATIONAL MEMORANDUM

On November 5, 2024, Councilmember Omar Torres, District 3, submitted his resignation from his seat effective November 27, 2024. On November 19, 2024, the City Council will be considering Item 3.7 which discusses the Council's options for filling the upcoming vacancy in District 3 pursuant to the City Charter. Mayor Matt Mahan and Councilmembers David Cohen and Pam Foley submitted a memo dated November 13, 2024 for Item 3.7 including a recommendation to direct the City Attorney's Office to prepare an information memorandum outlining the City Council's options for filling the vacancy in District 3 once it is effective. In anticipation of the Council discussion on November 19, this memorandum discusses the various options in the City Charter for filling the upcoming vacancy in District 3.

DISCUSSION

Under Charter Section 410, when a vacancy occurs, "the Council shall either fill the vacancy by appointment by a majority of its remaining members, or call an election for the purpose of filling such a vacancy." If a vacancy is anticipated, the Council may initiate this process before the vacancy occurs. (Charter Section 410(d).)

1. Filling the Vacancy by Appointment

If the Council fills a vacancy by appointment, the appointment is effective until the end of the unexpired term of office or January 1 following the next Regular Municipal Election after the appointment, whichever first occurs. The unexpired term for District 3 concludes December 31, 2026, and the appointee may serve until that date. The next Regular Municipal Election will not occur until the next statewide primary election on June 2, 2026.

2. Filling the Vacancy by Election and Interim Appointment

If the vacancy is filled by an election, the election is for the entire unexpired term of the office (e.g., through December 31, 2026). The election may be conducted at a Regular Municipal Election, a General Election or at a Special Municipal Election, as determined by the Council. (Charter Section 410(b).) The next Regular Municipal Election will not occur until the next statewide primary election on June 2, 2026. The date of a Special Municipal Election to fill a Council vacancy is set by Council resolution, which must be adopted at least 114 days before the date of the special election to permit the City Clerk to accept nomination papers in accordance with Municipal Code Section 12.05.060(A). Neither the Charter nor Municipal Code impose a timing requirement for setting the date of a run-off special election if one is necessary, although consideration will need to be given to allow for the receipt and counting of ballots as required under the Elections Code.

If a vacancy is to be filled by election, the Council may make an interim appointment to fill the office until a candidate has been elected and the results of the election have been certified.

NORA FRIMANN
City Attorney

By /s/ _____
Matthew Tolnay
Deputy City Attorney

For questions, please contact Matthew Tolnay, Deputy City Attorney at (408) 535-1912.