

Memorandum

**TO: HONORABLE MAYOR AND
CITY COUNCIL**

FROM: TONI J. TABER, CMC



SUBJECT: FILLING COUNCIL VACANCIES

DATE: November 21, 2022-Updated
November 29, 2022

INFORMATION

On November 16, 2022, the 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, and to schedule a Special Meeting no later than December 18, 2022, for Council to decide the process for filling Council seats vacated by the recent election beginning January 1, 2023.

The City Clerk polled all Council members for several potential dates for the meeting, with 5pm on Monday, December 5, 2022 having the highest number of Councilmembers able to

		Mayor	Jones	Jimenez	Perez	Cohen	Carrasco	Davis	Esparza	Arenas	Foley	Mahan	Yes	Maybe	No
2-Dec	9am	No	Yes	Yes	No	no	No	Yes	No	Yes	Yes	No	5	0	6
2-Dec	1pm	No	No	Yes	Yes	no	Yes	Yes	No	Yes	Yes	No	6	0	5
2-Dec	5pm	No	Yes	Yes	Yes	no	Yes	Yes	Yes	No	No	No	6	0	5
5-Dec	5pm	No	Yes	Yes	No	yes	Yes	Yes	Yes	No	Yes	Yes	8	0	3
8-Dec	5pm	No	Yes	Yes	No	yes	No	Yes	Yes	No	No	No	5	0	6
9-Dec	9am	No	No	no	No	yes	Yes	Yes	No	Yes	Yes	Yes	6	0	5
9-Dec	1pm	No	No	Yes	Yes	yes	Yes	Yes	Yes	Yes	No	Maybe	7	1	3
12-Dec	9am	No	Yes	Yes	No	no	Yes	Yes	No	Yes	Yes	Yes	7	0	4
12-Dec	1pm	No	Yes	Yes	Yes	maybe	No	Yes	No	Yes	No	Yes	6	1	4
12-Dec	5pm	Yes	Yes	Yes	Yes	no	No	Yes	No	No	No	Yes	6	0	5
15-Dec	9am	No	No	no	No	yes	Yes	Yes	No	No	Yes	Yes	5	0	6
15-Dec	5pm	No	No	Maybe	Yes	yes	No	No	No	No	Maybe	No	2	2	7
16-Dec	9am	No	Yes	Yes	Yes	yes	No	Yes	No	Yes	No	Yes	7	0	4
16-Dec	1pm	No	No	Yes	No	maybe	No	Yes	No	Yes	No	Yes	4	1	6
16-Dec	5pm	Yes	Yes	Yes	No	yes	No	Yes	No	No	No	Maybe	5	1	5

attend as well as an evening meeting time that allows for the highest level of public participation. The results as polled are:

Additionally, the Committee directed the City Clerk to provide additional information to assist the City Council in making the decision including past results from special elections and regular elections for District 4, potential timeline of a special election, timeline of the Primary election held on March 5, 2024, and estimated costs of elections.

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 allows the members who are vacating their 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 office¹ 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.

¹ December 31, 2024.

- In 2000, Manny Diaz was elected to the 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 and 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 Madison 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 No. 77225](#)). One of the options discussed at that meeting was to leave the District 4 seat vacant pending the election. Concern was expressed that leaving the District 4 seat vacant without an interim appointment would leave Council District 4 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 for a cost of \$701,601 for the special primary in April 2015, and \$496,594 for the special runoff in June 2015. 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.

With District 4 having the most special elections in recent Council history, it is a useful district to show the turnout of special elections vs. regular elections. Therefore, the turnout for District 4 is below:

Election	Total Registration	Ballots Cast	Citywide Turnout	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*

*The District 4 candidate won more than 50% of the vote in the Primary; therefore, no runoff was needed.

TIMELINE

While in 2014/15, we were able to hold an election in April, changes to election laws since that time, have made that timeline too aggressive to complete and to allow for proper preparation and noticing for both the City of San José and the County of Santa Clara's Registrar of Voters. This includes requesting services from the Secretary of State. The proposed primary election date is Tuesday, May 16, 2023 with a runoff on Tuesday, August 1, 2023. The timeline is below and includes the timeline of the March 5, 2024 election as requested by the Rules and Open Government Committee.

The table is color coded by election with green lines related to the special election, and yellow related to the March 2024 primary. March 2024 dates are also marked with an asterisk for easier viewing.

Date	Action Item
10-Jan-23	Election Official to Publish Notice of Election--Candidates
23-Jan-23	Filing Period for Nomination Papers and Candidate's Statements Opens
17-Feb-23	Filing Period for Nomination Papers and Candidate's Statements Closes
16-May-23	Election Day
23-Jun-23	Last Day to Declare Results
27-Jun-23	Certification of Election Results at City Council
1-Aug-23	Runoff Election

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8- Aug-23 *	Campaign contribution begins for March 5, 2024 Election
31-Aug-23	ROV Certifies results
12-Sep-23	Certification of Election Results at City Council
13-Nov-23 *	Filing Period for Nomination Papers and Candidate's Statements Opens
8-Dec-23 *	Filing Period for Nomination Papers and Candidate's Statements Closes
5-Mar-24 *	Election Day
12-Apr-24 *	Last Day to Declare Results
16-Apr-24 *	Certification of Election Results at City Council
5-Nov-24 *	Runoff Election
5-Dec-24 *	ROV Certifies results
10-Dec-24 *	Certification of Election Results at City Council

Costs of Election

Below are the estimated costs of the 2023 Special Stand-alone Election and Special Runoff Election for San José Council District 8 as provided by the Santa Clara County Registrar of Voters. District 10 has a similar number of registered voters, so the estimated cost will be essentially the same. Due to changes in election laws, the expenses of elections have significantly increased since the 2015 special election. The image below is for one district only.

(1) 2023 VCA (Vote Center and Mail Ballot) Special Election	Low End	High End
Registered Voters as of 9/22/2022	64,033	64,033
Projected registration (110% current registration)	70,436	70,436
Estimated Costs	\$ 1,934,782	\$ 2,902,173
Estimated cost per candidate statement \$3,600 (not included above)		
(2) 2023 VCA (Vote Center and Mail Ballot) Special Election - Runoff	Low End	High End
Registered Voters as of 9/22/2022	64,033	64,033
Projected registration (110% current registration)	70,436	70,436
Estimated Costs	\$ 1,876,236	\$ 2,814,354
Estimated cost per candidate statement \$3,600 (not included above)		

Therefore, the estimated costs for the primary election for both Districts 8 and 10 range between \$3,869,564 - \$5,804,346. The range for the runoff election for both Districts 8 and 10 range between \$3,752,472 - \$5,628,708. The total range for both elections would be \$7,622,036 to \$11,433,054.

The costs of the special election is not budgeted in the current fiscal year's Citywide Elections Appropriation 3955 so funds would need to be appropriated from the General Fund during the Mid-Year Budget process. If a runoff election would be needed, funds would also have to be appropriated for FY 23-24.

UPDATE ALL MAIL NOVEMBER 29:

According to the City Attorney's Office, the Council may select to do all-mail election at which all voters will receive vote by mail ballots, and return them by mail. However, there will need to be some ballot drop off locations, which is for the ROV to decide. The election cannot be conducted entirely through the mail (e.g., no drop off locations) as we do not meet the criteria under EC Section 4000. The date of the election cannot occur within 113 days from whenever the Council calls for the election, to allow for notice and the nomination period to occur as stated in the Municipal Code. While we could call a special primary election for any Tuesday (avoiding holidays), we consolidate elections and outsource election administration to the ROV, so there must be some coordination. As for the run-off, there needs to be some time in between to certify the primary results to determine who advances. Legally, the ROV has 30 days from the date of the election to certify the results to the City, and then the Council has to certify the results.

If Council votes to do an all-mail election, we could move the election date two weeks earlier to May 2, which would move the runoff to two weeks earlier. This would move the nomination period earlier, and would be the soonest possible date in order to get the preparation work done in time for the nomination period to open on January 9.

(1) 2023 All Mail Ballot Special Election	Low End	High End
Registered Voters as of 9/22/2022	64,033	64,033
Projected registration (110% current registration)	70,436	70,436
Estimated Costs	<u>\$ 957,814</u>	<u>\$ 1,436,721</u>
Estimated cost per candidate statement \$3,600 (not included above)		
(2) 2023 All Mail Ballot Special Election - Runoff	Low End	High End
Registered Voters as of 9/22/2022	64,033	64,033
Projected registration (110% current registration)	70,436	70,436
Estimated Costs	<u>\$ 932,361</u>	<u>\$ 1,398,541</u>
Estimated cost per candidate statement \$3,600 (not included above)		

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Therefore, the estimated costs for the primary election for both Districts 8 and 10 range between \$1,915,628 to \$2,873,442. The range for the runoff election for both Districts 8 and 10 range between \$1,864,722 and \$2,797,082. The total range for both all-mail elections would be \$3,780,350 to \$5,670,524.

An updated timeline using May 2 as an all-mail ballot date is below:

Date	Action Item
23-Dec-22	Election Official to Publish Notice of Election--Candidates
9-Jan-23	Filing Period for Nomination Papers and Candidate's Statements Opens
3-Feb-23	Filing Period for Nomination Papers and Candidate's Statements Closes
11-Apr-23	Last Day to Mail Voter Information Guides and Polling Place Notices
17-Apr-23	Last day to Register to Vote
25-Apr-23	Last day for Election Official to Publish Notice of Nominees
2-May-23	Election Day
1-Jun-23	Last Day to Declare Results
6-Jun-23	Certification of Election Results at City Council
18-Jul-23	Runoff Election
17-Aug-23	ROV Certifies results
22-Aug-23	Certification of Election Results at City Council
8- Aug-23 *	Campaign contribution begins for March 5, 2024 Eleciton
13-Nov-23	Filing Period for Nomination Papers and Candidate's Statements Opens
8-Dec-23	Filing Period for Nomination Papers and Candidate's Statements Closes
13-Feb-24	Last Day to Mail Voter Information Guides and Polling Place Notices
19-Feb-24	Last day to Register to Vote
27-Feb-24	Last day for Election Official to Publish Notice of Nominees
5-Mar-24	Election Day
12-Apr-24	Last Day to Declare Results
16-Apr-24	Certification of Election Results at City Council
5-Nov-24	Runoff Election
5-Dec-24	ROV Certifies results
10-Dec-24	Certification of Election Results at City Council