



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann
City Attorney

SUBJECT: Filling Council Vacancies

DATE: December 2, 2022

This memorandum discusses the options in the Charter for filling the anticipated vacancies in Council Districts 8 and 10 following the outcome of the November 8, 2022 election.

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, as it is here, the Council may initiate this process before the vacancy occurs and the member(s) who will be vacating the Council may participate in the process. (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 terms for Districts 8 and 10 conclude December 31, 2024, and the appointees may serve until that date.

To be eligible for appointment, a person must (1) have been a citizen of the United States for at least one year immediately preceding the commencement of the term for which the person is appointed; (2) a resident of the City and of the District to which they are appointed for at least 30 days immediately preceding the date of appointment; and (3) a registered elector of the City at the time of appointment. (Charter Section 404.)

2. Filling the Vacancy by Election

If the vacancy is filled by an election, the election is for the entire unexpired term of the office (e.g., through December 31, 2024). 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 statewide primary election on March 5, 2024. 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. A person who is appointed during the interim period must meet the eligibility requirements previously described above to hold office.

3. Term Limits

Under Charter Section 402(b), any person appointed or elected to fill an unexpired term of two years or less in length is eligible to serve two successive four-year terms upon the expiration of the unexpired term for which that person was appointed or elected. However, any person appointed or elected to fill an unexpired term of more than two years in length shall only be eligible to serve one successive four-year term.

NORA FRIMANN
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By /s/ _____
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For questions, please contact Nora Frimann, City Attorney at (408) 535-1900

cc: Jennifer Maguire