



## CITY OF CORONADO

### CITY COUNCIL STAFF REPORT

December 17, 2024

11b

#### **CONSIDERATION OF OPTIONS TO FILL THE COUNCIL VACANCY**

##### **RECOMMENDATION:**

Receive the report, evaluate options on how to fill the City Council vacancy under state law, and provide direction to implement the preferred option, which may include calling a special election, making an immediate appointment, or facilitating a process that leads to an appointment, within the 60 days provided by state law.

##### **BACKGROUND:**

Councilmember John Duncan's election as Mayor will result in a vacancy of his Council seat. Consequently, the City Council is required to consider options for filling it under Government Code Section 36512.

Per Government Code Section 36512(b), the City Council must, within 60 days of the vacancy, either fill the seat by appointment or call a special election. The special election must occur on a regularly established date, not less than 114 days from the call of the election. The term for the newly filled seat will expire in December 2026.

The deadline for the Council to decide on the vacancy process is February 15, 2025.

##### **ANALYSIS:**

The City Council has two mechanisms for addressing the Council vacancy under state law: 1) call for a special election or 2) make an appointment.

The first option, calling a special election, requires compliance with Government Code Section 36512(b)(1), which mandates that the election be held at least 114 days from the date it is called. The table below lists the available election dates for 2025 along with their declaration dates and filing period. The County Registrar of Voters has 30 days to certify results of an election.

	Election Date	Election Type	City Council Must Call Election By	Filing Period
<b>2025</b>	May 6 (mail ballot)	Special	January 12, 2025 (Sunday)*	1/13/25 -2/7/25
	August 26 (mail ballot)	Special	May 4, 2025 (Sunday)	5/5/25 – 5/30/25
	November 4	Special	July 13, 2025 (Sunday)	7/14/25 – 8/8/25

\*Note that a May 6 special mail election must be called by January 12, 2025 which is earlier than the 60-day period to appoint or call an election to fill a Council vacancy.

There are associated costs and fiscal impact in holding a special election. The costs would be calculated based on the number of registered voters. While the exact cost cannot be determined until closer to the date, preliminary estimates from the San Diego Registrar of Voters are \$275,000 - \$450,000. Attached for consideration are draft resolutions should the City Council opt to call an all-mail ballot special election.

Alternatively, the City Council may choose to fill the vacancy by appointment. There are no specific guidelines in either the Government Code or City Code for how the appointment must be conducted. Thus, the Council has discretion over the appointment process. Possible methods for making the appointment include a simple selection of a qualified resident, accepting applications followed by public interviews, or forming an ad hoc subcommittee to screen candidates. The Council may also explore other methods it deems appropriate. The Brown Act requires any interviews of potential appointees be conducted by the entire Council to held in open session. Three affirmative votes from the City Council are required to approve any appointment.

The selected appointee must be a U.S. citizen, a resident of Coronado, a registered voter, and willing to complete the necessary financial disclosures as required by the Political Reform Act. Furthermore, the individual must be available to attend required meetings and would still be eligible to run for office in the future and serve two consecutive elected terms.

The Coronado Municipal Code Section 1.80.030 term limit provision does not apply to the vacancy appointment. Individuals who formerly served as members of the Council for two full consecutive terms may be considered for appointment for the current vacancy.

A court analyzing CMC provisions would be required to follow defined rules to interpret the text. Foremost among these rules is that a court “looks first to the words of the statute, giving them their plain, usual, ordinary, and commonsense meaning.”<sup>1</sup> A court's analysis ends if the words of a statute are clear and unambiguous—in that case, the plain meaning of the text governs, and there is no need for further judicial construction or reliance on legislative history.<sup>2</sup> The same rules apply to laws enacted by initiative—if the text of an initiative is not ambiguous, a court presumes voters intended the plain meaning of that text, and may not modify or rewrite the text to conform to some other objective.<sup>3</sup>

CMC section 1.80.030.B provides that “no person shall be elected as a member of the City Council for more than two full consecutive terms.” The word “elect” is defined by Merriam-Webster Dictionary as “to select by vote for an office, position, or membership.” Similarly, the Oxford English Dictionary defines “elect” as to “choose (someone) to hold public office or some other position by voting,” and the Cambridge English Dictionary defines the term as “to decide on or choose, especially to choose a person for a particular job, by voting.” Plainly, to be “elected” means to be placed into an office by a vote of voters, and contrasts with being “appointed,” which is defined by the same sources as being named officially, assigning a job or role to someone, or “to choose someone officially for a job or responsibility.”

Because the Municipal Code only prohibits persons from being “elected” for more than two terms, but does not refer to the “appointment” of persons or prohibit persons from “serving” more than two terms, the Municipal Code does not prohibit a termed-out councilmember from being *appointed* to complete the remaining duration of another councilmember’s term.

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<sup>1</sup> Estate of Griswold (2001) 25 Cal.4th 904.

<sup>2</sup> Mendiola v. CPS Security Solutions, Inc. (2015) 60 Cal.4th 833.

<sup>3</sup> Wishnev v. The Northwestern Life Ins. Co. (2019) 8 Cal.5th 199.

**FISCAL IMPACT:**

The fiscal impact of filling the Council vacancy will vary based on the chosen method, and could range from minimal costs associated with an appointment to more significant costs of a special election. The exact cost of a special election would be determined closer to the election date.

**ALTERNATIVE:**

The Council may propose alternative methods or direct staff accordingly.

**CALIFORNIA ENVIRONMENTAL QUALITY ACT:**

Not Applicable.

**PUBLIC NOTICE:**

Not required at this time. Future public notice requirements depend on the selected option. If a special election is called, the City Clerk will publish required notices. If an appointment process is chosen, the City Clerk will advertise the vacancy.

**ATTACHMENTS:**

1. Draft Resolution calling for an all-mail ballot special election
2. Resolution requesting the County ROV provide election services to the City

Submitted By: City Clerk's Office / Kelsea Holian