



CITY COUNCIL STAFF REPORT



December 20, 2022

ITEM TITLE

Declare Vacancies for District 3 City Councilmember and City Attorney Seats, Determine Whether to Fill District 3 Councilmember Vacancy by Appointment or by Calling a Special Election, Call a Special Election for City Attorney Vacancy, and Related Actions

Report Number: 22-0320

Location: No specific geographic location

Department: City Clerk

Environmental Notice: The activity is not a “Project” as defined under Section 15378 of the California Environmental Quality Act State Guidelines; therefore, pursuant to State Guidelines Section 15060(c)(3) no environmental review is required.

Recommended Action

Adopt resolutions, provide direction to staff, and appropriate funds, as appropriate, implementing the City Council’s actions to 1) declare vacancies for the District 3 City Councilmember and City Attorney seats, 2) determine whether to go through an application and appointment process or call a special election to fill the District 3 City Councilmember vacancy, 3) determine whether the election will be conducted using the Vote Center model (in-person) or all-mail ballot format for the City Attorney vacancy and, if the special election option is selected, the District 3 City Councilmember vacancy, 4) determine the date of the special election, and 5) implement any required related actions, including necessary appropriations **(4/5 Vote Required for Appropriations)**

SUMMARY

The District 3 City Councilmember and City Attorney seats are vacant as a result of the November 8, 2022 elections. District 3 City Councilmember Steve Padilla was elected to State Senate and resigned from the City Council, and the winner of the City Attorney election, Simon Silva, passed away and is unable to take office. The City Charter provides regulations for filling elected official vacancies, depending on the length remaining in the unexpired term of the office. Due to the length of the remaining term for the City Attorney vacancy, a

special election is required. Due to the length of the remaining term for the District 3 City Councilmember, the vacancy can be filled by appointment or by special election. A special runoff election would be required if no candidate receives a majority of the votes (50% +1) in the special election. The ensuing report provides additional details and options to fill the vacancies.

ENVIRONMENTAL REVIEW

The Director of Development Services has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that the activity is not a “Project” as defined under Section 15378 of the State CEQA Guidelines because it will not result in a physical change in the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the activity is not subject to CEQA. Thus, no environmental review is required.

BOARD/COMMISSION/COMMITTEE RECOMMENDATION

Not applicable.

DISCUSSION

BACKGROUND

As a result of the November 8, 2022 election, the District 3 City Councilmember and City Attorney seats are vacant. District 3 City Councilmember Steve Padilla was elected to State Senate and resigned from the City Council (Attachment 1), and the winner of the City Attorney election, Simon Silva, passed away and is unable to take office. The City Charter provides regulations for filling elected official vacancies, depending on the length remaining in the unexpired term of the office.

At the meeting on December 13, 2022, the City Council declared the results of the November 8, 2022 election, including the passage of Measure K, which substantially revised the City’s Charter. References in this report to the City Charter are made with respect to the newly revised Charter provisions (Attachment 2).

Methods to Fill Elected Official Vacancies (Charter Sections 303(C) and 503(G))

- *City Attorney Seat - Special Election Required.* The vacant City Attorney seat term expires in December 2026. When a vacancy occurs with more than 24 months remaining in the term for the City Attorney, the Charter requires that the City Council fill the vacancy by calling a special election. A special runoff election is required if no candidate receives a majority of the votes (i.e., 50%+1) in the special election.
- *District 3 City Councilmember Seat – Option to Appoint or Elect via Special Election.* The vacant District 3 City Councilmember seat term expires in December 2024. When a vacancy occurs with more than one year and fewer than 25 months remaining in the term for a Councilmember, the Charter allows the City Council to choose between filling the vacancy by appointing a person through an application and

interview process or by calling a special election. If the City Council chooses to fill the vacancy by appointment, the appointment must be made within 45 days, otherwise, a special election is required.

City Council Decisions to be Made

In accordance with the options provided for in the City Charter, a summary of the decisions to be made by the City Council are as follows and more fully explained in the balance of this report:

1. Determine which process will be used to fill the District 3 City Councilmember vacancy:
 - a. Appointment of a person
 - b. Special election
2. Determine the special election format for the City Attorney vacancy and, if the special election option is selected in Decision #1 above, the District 3 City Councilmember vacancy:
 - a. Vote Center model (in-person)
 - b. All-Mail Ballot election
3. Determine the date for the special election:
 - a. For a Vote Center model election:
 - i. April 18, 2023¹
 - ii. November 7, 2023
 - b. For an All-Mail Ballot election:
 - i. April 18, 2023¹
 - ii. May 2, 2023

¹ The election date of April 18, 2023 is calculated based on a December 20, 2022 declaration of vacancy.

DECISION #1: PROCESS TO FILL THE DISTRICT 3 CITY COUNCILMEMBER VACANCY

City Charter Section 303(C)(3) provides that if a vacancy is declared by the City Council with more than one year but fewer than 25 months remaining in the term from the date of declaration, the City Council may either appoint a person to fill the vacant seat or call a special election.

A. Appointment Options and Considerations

Process. Chula Vista Municipal Code (CVMC) [Chapter 2.53](#) provides the appointment process to fill vacancies on the City Council. CVMC Chapter 2.53, a sample appointment timeline, and materials for a potential appointment are provided in Attachment 3. A summary of the process is as follows:

1. The City Clerk works with City staff to notify the public of the vacancy. Communication regarding the vacancy would include: posting notice of the vacancy on the City's website and at City facilities, publication of advertisements in the language-specific newspapers used for election-related advertisements (languages are English, Spanish, Filipino, Vietnamese, and Chinese), social media posts, press release, notification to those registered for City newsletters, and notification to City board and commission members.
2. The application period begins within five calendar days of the vacancy being declared and ends 14 calendar days later. Applicants must submit a qualified application during the application period. The City Council may provide direction to staff on the components required for a qualified application, such as a resume and/or disclosure of economic interests. Following the close of the application

period and no later than 72 hours before a City Council meeting to consider the applications, the City Clerk will make all qualified applications available to the City Council and the public at the same time. City Councilmembers shall independently review all applications.

3. At an open City Council meeting, the City Council will make nominations of applicants for interviews. Members of the public, including applicants, are afforded the opportunity to speak on the item. The City Council publicly makes nominations for interviews at the meeting. Any applicant receiving two or more nominations will be invited to interview. (If four or fewer qualified applications are received, the nomination process does not occur, and all applicants are invited to interview.)
4. At an open City Council meeting, the City Council will interview applicants, with the public being afforded the opportunity to speak before and after the interview process.
5. Following the interviews and public comment, the City Council publicly deliberates and selects one individual to fill the vacancy. The affirmative vote of at least three City Councilmembers is required for appointment.

Should the City Council choose to fill the vacancy by appointment, staff will request feedback and direction on the appointment process details, including the required components of the application and the length of time and format of interviews. A sample timeline, the application and forms from the last City Council appointment in 2015, and other related materials are provided in Attachment 3.

Cost. The cost of the appointment process is relatively minor, consisting mostly of staff time and basic supplies that are already included in the budget.

Appointee Prohibited From Running for Election Immediately After the End of Appointed Term. The City Charter prohibits an individual who is appointed by the City Council from seeking nomination and election to the office to which they were appointed until one year from the termination of the appointed term has elapsed. The effect of this is that a person appointed to fill the remaining unexpired term of the District 3 City Councilmember seat would not be permitted to run for office at the next regular election for the seat in 2024.

Timeframe for New Member to be Seated. If the vacancy is filled by appointment, the member will be seated by February 2023.

Timeframe for Deciding Whether to Elect or Appoint. The City Charter allows 14 days from the date of the declaration of vacancy to determine whether to fill the vacancy by appointment or special election. Staff recommends the City Council make the decision on December 20; otherwise, options for dates to hold the election and consolidate with the required City Attorney's election may become constrained.

If City Council is Unable to Make an Appointment within 45 Days, Special Election Required. City Charter Section 303(C)(3) states that if the City Council determines to fill the vacancy by appointment and is unable to make an appointment within 45 days of the City Council declaring the vacancy, the City Council's power to appoint is terminated and the City Council shall call a special election to fill the vacancy.

Should that situation occur, the District 3 City Councilmember seat could be added to the ballot for a November 2023 election that may be called for the City Attorney. However, there would be insufficient time to add the District 3 City Councilmember seat to an April or May election. If the election for City Attorney is called for April or May and the City Council is unable to make the appointment for the District 3 City Councilmember, a separate standalone election for the District 3 City Councilmember may be required. The cost of a special standalone election for the District 3 City Councilmember seat is estimated by the Registrar

of Voters to be approximately \$600,000 for a Vote Center model election or \$500,000 for an all-mail ballot election.

B. Special Election Options and Considerations

Consolidation with City Attorney Election. A special election to fill the District 3 City Councilmember vacancy could be consolidated with the City Attorney election if the elections are called at the same time. The options for the format of the election (Vote Center model/in-person or all-mail ballot election) and election dates will be presented in the Decision #2 and #3 sections of this report.

Runoff Required. A special runoff election would be required if no candidate receives a majority of the votes (i.e., 50%+1) in the special election.

Elected Member Can Run for Reelection. The elected member could serve out the remainder of the District 3 City Councilmember term, which expires in December 2024. In accordance with the City Charter, since the member would serve fewer than two years, they would be eligible to seek reelection for two full, four-year terms thereafter. This means the member could seek reelection in 2024 and, if successful, again in 2028.

Cost for Special Election. The cost to include the District 3 City Councilmember seat with the election for the City Attorney seat is relatively minor, as the Registrar of Voters estimated.

Cost for Special Runoff Election (if required). If a special runoff election is required for the District 3 City Councilmember seat and *not* for the City Attorney seat, a standalone special runoff election for the District 3 City Councilmember may be required. If the special runoff election could be consolidated with the City's March 2024 election, the costs are estimated to be \$70,000. A standalone special runoff election for the District 3 City Councilmember seat is estimated by the Registrar of Voters to be approximately \$600,000 for a Vote Center model election or \$500,000 for an all-mail ballot election.

Timeframe for New Member to be Seated. If the District 3 City Councilmember vacancy is filled by special election, the member could be seated as soon as May 2023 (if an April 2023 election is selected and no runoff election is required) or as late as April/May 2024 (if a November 2023 election is selected and a runoff is required).

District 3 Boundaries for Purposes of Filling the Vacancy

Although redistricting was completed in 2021 and new boundaries have been drawn for the City's four City Council districts, the new map does not go into effect until the next primary election for each district (2022 for Districts 1 and 2 and 2024 for Districts 3 and 4). The boundaries that were in place when the current term began in 2020 (the City Council district map adopted in 2015) will apply to fill the vacancy for the unexpired term, whether filled by appointment or special election. The City Council District 3 map that applies to fill the current vacancy is included in Attachment 4.

DECISION #2: FORMAT OF THE SPECIAL ELECTION

The special election to fill the City Attorney vacancy and, if the special election option is selected, the District 3 City Councilmember vacancy can be conducted using the Vote Center model (in-person voting) or by all-mail ballot. The table below presents options and considerations for both.

	VOTE CENTER MODEL	ALL-MAIL BALLOT
Election Date	4/18/2023 or 11/7/2023	4/18/2023 or 5/2/2023
Basic Process	All voters receive a ballot in the mail and can return it by mail/ballot drop box or can vote in person at Vote Centers located throughout Chula Vista.	All voters receive a ballot in the mail and can return it by mail or to a ballot drop box.
Cost	\$1.5 - \$2M per election	\$1 - \$1.5M per election
Physical Locations	Vote Centers: 6 citywide on Election Day <ul style="list-style-type: none"> • 11-day Vote Centers: 3 • 1-day Vote Centers: 3 	Ballot Drop Boxes: 11 citywide Ballots may also be returned by mail In-person voting would only be available at the Registrar of Voters office during normal business hours (Monday – Friday, 8 AM – 5 PM, closed weekends and holidays)

DECISION #3: ELECTION DATE

The City Charter allows several options for special election dates and special runoff election dates. City Charter Section 303(C)(2) allows a special election to be held on one of the dates identified below, whichever is practical. In determining which election date is practical, the City Council may want to consider the length of time potential candidates would have to decide to run for office and solicit campaign contributions, when the new member would take office, and other factors.

The City Council does not need to determine the format or date of a special runoff election at this time. Staff will return with options for City Council should a special runoff election be required. Information and possible dates for runoff elections are included in this report only to provide a fuller picture of the various scenarios.

Special Election and Special Runoff Election Dates Provided by the City Charter¹

1. The next established election date, as specified in the California Elections Code
2. Within 120 days from the date specified below:
 - a. For a special election: from the declaration of vacancy
 - b. For a special runoff election: following the certification of the special election results

¹ Charter Section 303(C)(2) applies to a special election and Section 303(C)(2)(a) applies to a special runoff election.

Additionally, if a federal, State, or local election is scheduled to be held within 180 days of the declaration of vacancy or certification of the special election results, the City Council may also consolidate with that election. At this time, no federal, State, or local election that the City could consolidate with is scheduled to be held.

Vote Center Model Election

The following table depicts possible special election dates and considerations for a Vote Center model election.

	APRIL 18, 2023	NOVEMBER 7, 2023
Candidate Filing Period	12/27/22 – 1/20/23	7/17/23 – 8/11/23
Fundraising Period Before Election	~4 months	~11 months
Ability to Consolidate	Highly unlikely	Not anticipated, but possible
Election Results Certified By	5/18/23	12/7/23
Potential Runoff Dates (if required)¹	Sept. ² 2023 or 11/7/23	3/5/24 ³ or April ⁴ 2024
Member Seated		
Earliest Anticipated Date:	May 2023	December 2023
Latest Anticipated Date (if runoff required):	December 2023	April/May 2024
<p>¹ Runoff dates provided assume the runoff election would be held using the Vote Center model and the runoff could not be consolidated with another federal, State, or local election.</p> <p>² Actual runoff election date in September 2023 would be based on the date the special election was certified.</p> <p>³ A 3/5/2024 special runoff election may be able to be consolidated with the City’s next primary election, which would reduce costs.</p> <p>⁴ Actual runoff election date in April 2024 would be based on the date the special election was certified.</p>		

All-Mail Ballot Election

The following table depicts possible special election dates and considerations for an all-mail ballot election.

	APRIL 18, 2023	MAY 2, 2023
Candidate Filing Period	12/27/22 – 1/20/23	1/9/2023 – 2/3/2023
Fundraising Period Before Election	~4 months	~4.5 months
Ability to Consolidate	Highly unlikely	Highly unlikely
Election Results Certified By	5/18/23	6/1/2023
Potential Runoff Dates (if required)¹	8/29/2023 or Sept. ² 2023	8/29/2023 or Sept. ² 2023
Member Seated		
Earliest Anticipated Date:	May 2023	June 2023
Latest Anticipated Date (if runoff required):	November 2023	October 2023
<p>¹ Runoff dates provided assume the runoff election would be held as an all-mail ballot election and the runoff could not be consolidated with another federal, State, or local election.</p> <p>² Actual runoff election date in September 2023 would be based on the date the special election was certified.</p>		

Special Election Formats and Associated Costs

The Registrar of Voters has provided the following estimated costs for the special elections.

ELECTION TYPE	CITY ATTORNEY	DISTRICT 3 CITY COUNCILMEMBER
Vote Center Model – Standalone (Not Consolidated)	\$1.5-\$2.0 million	- Relatively minor costs if consolidated with City Attorney election - \$600,000 if not consolidated with City Attorney
All-Mail Ballot – Standalone (Not Consolidated)	\$1.0-\$1.5 million	- Relatively minor costs if consolidated with City Attorney election - \$500,000 if not consolidated with City Attorney
Vote Center Model – Possible Runoff Consolidated with City’s March 2024 Election	\$180,000	\$70,000

DECISION-MAKER CONFLICT

Staff has reviewed the decision contemplated by this action and has determined that it is not site-specific and consequently, the real property holdings of the City Council members do not create a disqualifying real property-related financial conflict of interest under the Political Reform Act (Cal. Gov’t Code § 87100, et seq.).

Staff is not independently aware, and has not been informed by any City Councilmember, of any other fact that may constitute a basis for a decision-maker conflict of interest in this matter.

CURRENT-YEAR FISCAL IMPACT

As explained throughout this report, the fiscal impacts for the current year will depend on which options are used to fill the vacancies. Possible scenarios and their fiscal impacts are provided below. The resolutions attached include associated appropriations.

Possible scenarios and associated current-year fiscal impact:

- Vote Center model special election held in April 2023: \$1.5 – \$2.0 million
- All-mail ballot special election in April or May 2023: \$1.0 – \$1.5 million
- Vote Center model or all-mail ballot special elections or special runoff elections after June 2023: No current-year fiscal impact; associated budget would be requested as part of the City’s annual budget process for Fiscal Year 2023/24.

The estimates are the best available estimates, as provided by the Registrar of Voters. Actual costs may vary. County of San Diego Administrative Code Section 439.1 requires that the City provide a deposit of the estimated cost of the election at least 60 days in advance of the election. Upon the Registrar’s reconciliation, typically within six months of the election, a final bill (if costs were higher than anticipated) or a refund (if costs were lower than anticipated) is issued to the City.

ONGOING FISCAL IMPACT

The ongoing fiscal impacts will depend on which options are used to fill the vacancies and whether a special runoff election would be required, as explained throughout this report. Possible scenarios and their fiscal impacts are provided below.

Possible scenarios and associated ongoing fiscal impact for Fiscal Year 2023/24:

- Vote Center model special election or special runoff election (if required) held in November 2023:
 - o \$1.5 - \$2.0 million if the election is for the City Attorney seat or the City Attorney and District 3 City Councilmember seats
 - o \$600,000 if the election is a special runoff for the District 3 City Councilmember seat only
- All-mail ballot special runoff election (if required) in August 2023: \$1.0 – 1.5 million
- Special runoff election (if required) consolidated with the City’s April 2024 election:
 - o \$70,000 for the District 3 City Councilmember seat
 - o \$180,000 for the City Attorney seat

The estimates are the best available estimates, as provided by the Registrar of Voters. Actual costs may vary. County of San Diego Administrative Code Section 439.1 requires that the City provide a deposit of the estimated cost of the election at least 60 days in advance of the election. Upon the Registrar’s reconciliation, typically within six months of the election, a final bill (if costs were higher than anticipated) or a refund (if costs were lower than anticipated) is issued to the City.

ATTACHMENTS

1. Letter of Resignation from Councilmember Padilla
2. Revised City Charter approved by voters 11/8/2022
3. CVMC 2.53 – City Council Appointment Process, Timeline, and Sample Documents
4. District 3 Map Applicable to Fill Vacancy

Staff Contact: Kerry K. Bigelow, MMC, City Clerk and Cristina H. Hernandez, City Clerk Analyst