



CITY OF BANNING STAFF REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Caroline Patton, Administrative City Clerk

MEETING DATE: January 9, 2024

SUBJECT: Consideration of Resolution 2024-01 and Resolution 2024-02, Calling a Special Election and Presenting Other Viable Options to Fill the District 4 Vacancy on the City Council

RECOMMENDATION:

Discuss and decide how to fill the City Council District 4 Vacancy by either appointment or special election and, if by appointment, provide direction to staff concerning a process for filling the vacancy by appointment, or if by special election, adopt either Resolution 2024-01 (November 5, 2024 Election Date) or Resolution 2024-02 (May 7, 2024 All Mail-In Ballot Election Date).

BACKGROUND:

On December 12, 2023, City Council Member Reuben Gonzales submitted a signed, written resignation letter to the City Clerk's Office. Consistent with the provisions of Government Code Section 1770(c)(2), the December 12th letter stated that the effective date of Mr. Gonzales' resignation would be December 12, 2023, after the conclusion of Item 3.1 ("Presentation(s)") on the City Council regular meeting agenda.

Under the Banning Municipal Code ("BMC"), the City is to follow the Government Code Section 36512(b), which provides that if a vacancy occurs in an elective office, the Council must, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy (BMC § 2.04.040). The vacancy for District 4 commenced on December 12, 2023, after Item 3.1 on the Regular City Council meeting agenda. As a result, by **February 10, 2024**, the Council must either (1) fill the vacancy by appointment or (2) call a special election to fill the vacancy.

JUSTIFICATION:

Fill Vacancy by Appointment

Councilmember Gonzales was elected in November 2022, began his term of office in December 2022, and, at the time of his resignation, was serving the first half of his four-year term. If the City Council wishes to fill the vacancy by appointment, that person would not complete the unexpired term of the vacant seat. Government Code Section 36512(b)(2)(A) states that if the vacancy occurs in the first half of the term and at least 130 days prior to the next general municipal election (i.e., November 5, 2024), "the person appointed to fill the vacancy shall hold office until the next general municipal election." Should the Council appoint someone to fill the vacancy, the person appointed will hold office until the person who is elected at the **November 5, 2024** election to fill the vacancy has been qualified (e.g., until November 2024). The person elected on November 5th to fill the vacancy will then hold office for Councilmember Gonzales' unexpired term (i.e., through December 2026).

Based on the discussion during tonight's meeting, if a majority of the Council wishes to fill the vacancy by appointment, then staff will need to schedule one or more special meetings prior to February 10th during which the Council can consider candidates for appointment and make a selection. Per Banning Municipal

Code Section 2.04.035(B)(2), any candidate for appointment to District 4 must reside in, and be registered to vote in, District 4. State law doesn't specify a particular process for the selection of a replacement council member. The Council could use the method previously used and solicit resumes and statements of interest from residents who wish to be considered and followed by candidate interviews in an open and public meeting. Alternatively, the Council could seek out potential replacements without the formality of an application process or it could create and direct an ad hoc committee to do so and then make a recommendation to the full Council. Whatever process the City Council chooses to follow, all Council discussions and deliberations regarding the appointment must be held in open session and at duly noticed public meetings held in compliance with the Brown Act.

Fill Vacancy by Special Election

If based on the discussion during tonight's meeting, a majority of the Council wishes to call a special election, that election must take place at the next "regularly established election date" that is not less than 114 days from the call of the special election. As of this meeting date, the Council has the option of consolidating a special election with the November 5, 2024 general municipal election or calling a special mail-in ballot election on May 7, 2024. The options are discussed further below. However, for the reasons discussed below, the option to call a special mail-in ballot election on May 7, 2024, will no longer be available to the City Council after January 14th should the Council decide to delay its decision this evening to a later date.

Special Election - Consolidated

Although there is an upcoming "regularly established election date" scheduled for March 5, 2024 (the Presidential Primary Election) under Elections Code Section 1000(a), that election date does not satisfy the minimum 114 day requirement and, if counting from today's date, would occur 56 days from the date of this meeting. Therefore, calling a special election for March 5, 2024 is not a feasible option for the Council.

Per Elections Code Section 1000(e), the next established election date that is not less than 114 days from today's meeting date (should the Council call the special election this evening) is the Consolidated General Election on **November 5, 2024**. There are 301 days in between today's date and November 5, 2024. Additionally, even if the City Council were to delay their decision this evening on how to fill the vacancy until a date no later than February 10, 2024, the next established election date would still be the November 5, 2024 Consolidated General Election because there are 269 days in between February 10th and November 5th.

Should the Council wish to call a special election on November 5, 2024, the District 4 seat will remain vacant until that election date. Per Government Code Section 36512(b)(1), the person elected at the **November 5, 2024** election to fill the vacancy will hold office for the remainder of Councilmember Gonzales' unexpired term until the November 2026 Consolidated General Election (i.e., through December 2026).

Special Election - Stand-Alone (All Mail-In Ballot)

Alternatively, the Elections Code also provides for "established mailed ballot election dates" and the City qualifies to hold an all mail-in ballot election to fill this vacancy under Elections Code Section 4004(c)(2).

In lieu of calling a special election on the November 5, 2024 Consolidated General Election date, the Council could choose to call a special election via all mail-in ballots. Under Elections Code 1500, the next special mail-in ballot election date that would meet the 114-day requirement is **May 7, 2024** (there are 119 days in between January 9th is May 7th). But if the Council delays their decision this evening on how to fill the vacancy until any date after January 14th but before February 10th, the Council will not make the 114-day deadline to call a special mail-in ballot election on May 7th.

Should the Council decide to hold a special election via all mail-in ballots on May 7, 2024, the District 4 seat will remain vacant until that election date. Per Government Code Section 36512(b)(1), the person elected to fill the vacancy will hold office for the remainder of Councilmember Gonzales' unexpired term

until the November 2026 Consolidated General Election (i.e., through December 2026).

FISCAL IMPACT:

The current registered voter total for the City of Banning's District 4 is currently at 4,260 (as of December 14, 2023).

Appointment

If the City Council wished to fill the vacancy by appointment until the next regular election, the additional cost to the City would be the cost of a consolidated election (e.g. held on a date with other elections). The base cost for a consolidated election is **\$1 per registered voter**, a consolidated special vacancy election would be approximately \$5,000.

Special Election

Should the City Council wish to fill the position via a special election, the additional cost to the City would be the cost of a stand-alone election (e.g. not held in conjunction with any other election). The base cost for a standalone (non-consolidated) election is **\$3.50 per registered voter**, a special vacancy election would be approximately \$16,000.

ALTERNATIVES:

1. Determine to fill the vacancy by appointment before February 10, 2024, and provide direction to staff concerning a process for filling the vacancy by appointment.
2. Determine to fill the vacancy by calling a special election before February 10, 2024, to be held and consolidated with the Consolidated General Election on November 5, 2024, and adopt Resolution 2024-01.
3. Determine to fill the vacancy by calling a special all mail-in ballot election before January 14, 2024, to be held on May 7, 2024, and adopt Resolution 2024-02.
4. Do not decide how to fill the City Council District 4 vacancy at this time, provide alternative direction to staff regarding the filling of the vacancy, and determine a date to call a special City Council meeting on or prior to February 10, 2024, in order for the City Council to determine how to fill the vacancy in compliance with Government Code Section 36512.

ATTACHMENTS:

1. [Resolution_2024-01__Special_Election.pdf](#)
2. [Resolution_2024-02__Special_Election_-_2.pdf](#)
3. [Att 1. GOV_1770..pdf](#)
4. [Att 2. Banning, CA Code of Ordinances Section 2.04.040.pdf](#)
5. [Att 3. GOV_36512..pdf](#)
6. [Att 4. ELEC_1000..pdf](#)
7. [Att 5. ELEC_1500..pdf](#)
8. [Att 6. ELEC_4004..pdf](#)