



**ANDREW JANZ**  
City Attorney

November 14, 2024

**MEMORANDUM**

**RE:** Filling a vacant seat on the City Council in January 2025

The following provides information relevant only to the vacancy in question. It includes general information and is not legal advice. The City Attorney's Office does not provide legal advice to the public.

**QUESTION**

What is the special election procedure if Councilmember Chavez is elected to a County Board of Supervisors (Board) seat for January 2025? As of the date of this memo, Councilmember Chavez is presumed elected, but the Fresno County Clerk has not yet certified the election.

**ANSWER**

Vacating the Council seat.

- If elected to the Board, Councilmember Chavez may resign at any time prior to being sworn into the Board, and his resignation will be effective upon receipt by the City Clerk unless a different date is specified in the resignation. (Charter § 305(c).)
- If the Councilmember does not resign prior to being sworn in, he will forfeit his council seat automatically upon being sworn into the Board. (Government Code § 1099(b).)

Special Election determines the successor Councilmember.

- As soon as a Council seat is vacated, the City Council must declare the vacancy and by resolution call a special election to fill the seat, which must be held no sooner than 90 days after the declaration of vacancy and no later than the next regular election after 90 days. (Charter § 305(b), (d)(2).)
- An interim Councilmember may be appointed only during the last year of the term, which is not applicable to the District 5 seat in January 2025. (Charter § 305(d)(1)(i).)
- If City Council fails either to call a special election within thirty days after the incumbent's resignation is effective, or the declaration of the existence of the vacancy becomes final, the salary or other compensation of each member of the Council shall cease until the Council calls such special election. (Charter § 305(f).)
- If the special election does not result in a majority vote for one candidate, the City Council shall call another special election within 30 days of the certification of the election results and the two candidates receiving the most votes shall be placed

on the second special election ballot. (Charter § 305(g).)

Example Timeline.

- If a seat is vacated on January 1, the City Council may pass a resolution calling for a special election at a meeting on January 9 or 16, 2025. The special municipal election must be at least 90 days out per the Charter. Note this Charter requirement would not allow the City time to consolidate the special with a March 4, 2025, general election date (January 9, 2025, plus 90 days is April 9, 2025).
- In addition to the Charter timing requirements, state law requires the Clerk to publish a Notice of Election for a municipal election to fill offices not earlier than the 127th nor later than the 113th day before a municipal election (Elec. Code § 12101), which places the special election in May at the earliest (January 9, 2025, plus 113 days is May 2, 2025.)
- The County Clerk has 30 days to certify the election results. (Elec. Code § 15372.)
- If there is no run-off and the Clerk certifies the results quickly (in less than 30 days), the vacant Council seat could be filled as early as May. If no candidate receives a majority vote in the special election, a run-off special election from the special election shall be scheduled within thirty days, with the two candidates receiving the most votes on the ballot. (Charter § 305(g).)

Sincerely,

*Amanda B. Freeman*

AMANDA B. FREEMAN  
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