



MEETING DATE: August 14, 2024

AGENDA ITEM: 10. Designate Elections Official

FROM: Steve Gross, City Attorney

RE: Designation of Elections Official

EXECUTIVE SUMMARY:

See Memorandum - attached

RECOMMENDATION:

Appoint Melissa Klundby as the Elections Official

ATTACHMENTS:

- A. MEMORANDUM - DESIGNATION OF ELECTIONS OFFICIAL
- B. CITY CLERK APPOINTMENT

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MEMORANDUM

To: City Council, City of Portola
From: Steven C. Gross, City Attorney
Date: August 8, 2024
Subject: Designation of Elections Official

I. Recommended Action

I recommend that the City Council designate Melissa Klundby, former Portola City Clerk, to be the City's Election Official who is charged with conducting the General Municipal Election scheduled to be held on Tuesday, November 5, 2024.

II. Background

A General Municipal Election is scheduled to be held on Tuesday, November 5, 2024. The deadline for candidates seeking to be elected to City offices to file nomination papers is during regular business hours as posted not later than the 88th day before the election (Elections Code § 10224). The 88th day before the election is Friday, August 9, 2024. However, the City's regular business hours, as posted at City Hall and on the City's website, are Monday – Thursday 9am-5pm. Therefore, the deadline for filing nomination papers is 5pm on August 8, 2024.

As of the close of the nomination period today, only one person was nominated as a candidate for each of three (3) City Council Member At-Large offices, the City Clerk office, and the City Treasurer office. All three (3) candidates for the City Council Member At-Large offices are incumbent officers. There is no incumbent that holds the City Clerk office or City Treasurer office.

Because all incumbent office holders filed nomination papers prior to 5 pm on August 8, 2024, there is no extended filing period. The deadline to file nomination papers was 5pm on August 8, 2024. (Elections Code §§ 10224 and 10225). Therefore, the Council may appoint the incumbents who filed nomination papers to fill the three (3) City Council

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Member At-Large offices and Linda Cooley to fill the vacant City Clerk office and City Treasurer office in accordance with Elections Code 10229, discussed below.

III. Law and Analysis

Pursuant to California Elections Code § 10229, when the above conditions exist, the City Council is allowed to take one of the following actions:

1. Appoint to the office the person who has been nominated.
2. Appoint to the office any eligible elector if no one has been nominated.
3. Hold the election if either no one or only one person has been nominated.

In order for the Council to be able to take one of the actions, the City Elections Official must certify that there are insufficient nominees for the offices and post a notice of insufficient nominees. The posting cannot occur until the nomination period has closed (August 8, 2024) and the notice must be posted for a minimum of five (5) days and state when the Council will meet. However, if the City Council is going to make any appointments, it must do so by the 75th before the election. Each of these requirements is set forth in Elections Code § 10229. Assuming that the notice is filed on August 15, 2024, the Council must select a date for a special meeting that is on either August 21 or 22, 2024.

Elections Code § 320, copied below, provides that the city clerk is the elections official unless the City Council or its authorized agent designates another person. Currently, the City has no City Clerk. While the former City Clerk appointed two (2) Deputy City Clerks, neither person was specifically appointed to serve as the elections official. Therefore, the Council should designate someone to serve as the elections official. Former City Clerk Melisa Klundby has agreed to be designated and serve as the City's election official for the General Municipal Election scheduled to be held on Tuesday, November 5, 2024.

Based on the above, I believe it prudent for the City Council to designate Melissa Klundby to be the City's Election Official who is charged with conducting the General Municipal Election scheduled to be held on Tuesday, November 5, 2024. She will be able to provide the required certification of insufficient nominees and post the notice of insufficient nominees as required. Doing so will ensure that the City Council can make the appointments to the City's offices if it so desires as soon as possible. Once the City Council appoints a City Clerk, that person will then serve as the City's election official.

The Election Code sections referenced above are copied below.

Elections Code § 10224

All nomination papers shall be filed with the city elections official during regular business hours as posted, not later than the 88th day before the election. Until that time, but not after, a candidate may withdraw his or her nomination paper after it is filed with the elections official as provided in this section.

Elections Code § 10225

(a) Notwithstanding Sections 10220 and 10224, if nomination papers for an incumbent officer of the city are not filed by or on the 88th day before the election, during normal business hours, as posted, the voters shall have until the 83rd day before the election during normal business hours, as posted, to nominate candidates other than the person who was the incumbent on the 88th day, for that incumbent's elective office.

(b) This section is not applicable where there is no incumbent eligible to be elected. If this section is applicable, notwithstanding Section 10224, a candidate may withdraw his or her nomination paper until the 83rd day before the election during normal business hours, as posted.

Elections Code § 10229

If, by the 88th day, during normal business hours as posted, prior to the day fixed for a regularly scheduled municipal election or the 83rd day before the election, during normal business hours as posted, if an incumbent fails to file pursuant to Section 10225, (i) no one or only one person has been nominated for any office that is elected on a citywide basis, or (ii) no one or only one person is nominated to be elected from or by a legislative district, or (iii) in the case of any office or offices to be elected at large, the number of persons who have been nominated for those offices does not exceed the number to be filled at that election; or, if, by the 88th day, during normal business hours as posted, before a municipal election to fill any vacancy in office, no one or only one person has been nominated for any elective office to be filled at that election, and the election is subject to Section 36512 of the Government Code, the city elections official shall submit a certificate of these facts to the governing body of the city and inform the governing body of the city that it may, at a regular or special meeting held before the municipal election, adopt one of the following courses of action:

- (1) Appoint to the office the person who has been nominated.
- (2) Appoint to the office an eligible elector if no one has been nominated.
- (3) Hold the election, if either no one or only one person has been nominated. The city elections official shall publish a notice of the facts described in this section and the courses of action available under this subdivision. Publication shall be made pursuant to Section 6061 of the Government Code in any newspaper of general circulation as designated by the city elections official.

After the fifth day following the date of posting or publication, the governing body of the city may make the appointment or direct an election to be held in the affected territory. The person appointed, if any, shall qualify and take office and serve exactly as if elected at a municipal election for the office.

Notwithstanding Section 10403, if, by the 75th day before the municipal election, no person has been appointed to office pursuant to paragraph (1) or (2), the election shall be held.

(b) Subdivision (a) shall not apply if, at the regularly scheduled municipal election, more than one person has been nominated to another city office to be elected on a citywide basis or a city measure has qualified and is to be submitted to the voters at that municipal election.

(c) Notwithstanding Chapter 1 (commencing with Section 8600) of Part 3 of Division 8, or any other provision of the law to the contrary, if the governing body of a city makes an appointment pursuant to subdivision (a), the elections official shall not accept for filing any statement of write-in candidacy that is submitted after the appointment is made.

(d) Nothing in this section shall be construed to prevent a city from enacting an ordinance pursuant to Section 36512 of the Government Code, requiring that a special election be held, or from enacting an ordinance pursuant to Section 36512 of the Government Code, providing that a person appointed to fill a vacancy on the city council shall hold office only until the date of the special election, or both. Any ordinance or ordinances may allow for appointment consistent with subdivision (a) without requiring or providing for a special election.

If an appointment to office is made in a particular legislative district pursuant to subdivision (a), that appointment shall not affect the conduct of the municipal election in other legislative districts of the city.

Elections Code § 320

“Elections official” means any of the following:

- (a) A clerk or any person who is charged with the duty of conducting an election.
- (b) A county clerk, city clerk, registrar of voters, or elections supervisor having jurisdiction over elections within any county, city, or district within the state.

August 6th, 2024

SUSAN SCARLETT, INTERIM CITY MANAGER, CITY OF PORTOLA
35 THIRD AVENUE, PORTOLA CA 96122

As the former City Clerk for the City of Portola, I understand the current situation regarding the vacancy in the City Clerk position. I would like to submit my interest and willingness to accept the appointment for the position and the duties that come with it, for a short period of time, and for no compensation. Thank you for this opportunity.

SINCERELY,



MELISSA KLUNDBY