



MEETING DATE: August 21, 2024

AGENDA ITEM: 3. Appointment of Persons Nominated for City Offices

FROM: Steve Gross, City Attorney

RE: Appointment of Persons Nominated for City Offices

EXECUTIVE SUMMARY:

Attached is the Memorandum dated August 20, 2024 regarding the appointment of Persons Nominated for City Offices.

Also attached is the Memorandum dated August 8, 2024 Designation of Elections Official and The Certification of Insufficient Nominees and Notice of Insufficient Nominees.

RECOMMENDATION:

Consider appointing the only person nominated for the City offices of City Council Member, City Clerk and City Treasurer in lieu of holding an election.

ATTACHMENTS:

- A. MEMORANDUM - APPOINTMENT OF PERSONS NOMINATED FOR CITY OFFICES -
- B. MEMORANDUM AUGUST 8, 2024
- C. CERTIFICATION OF INSUFFICIENT NOMINEES
- D. NOTICE OF INSUFFICIENT NOMINEES

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Kelley R. Carroll*†
Sara D. Davidson
Pamela M. Everett
Steven C. Gross*
Brian C. Hanley*
Traci S. Mason
James E. Simon
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MEMORANDUM

To: City Council, City of Portola
From: Steven C. Gross, City Attorney
Date: August 20, 2024
Subject: Appointment of Persons Nominated for City Offices

I. Recommended Action

Appoint incumbent Council members Pat Morton, Jim Murphy, and Mikki Brown to the City Offices of City Council member and Linda Cooley to the City Offices of City Clerk and City Treasurer.

II. Background

Included with his Memorandum is a copy of my Memorandum to the City Council dated August 8, 2024, regarding Designation of Elections Official that was included in the meeting packet for the Council's regular meeting that was held on August 14, 2024. That Memorandum addresses the legality of appointing the persons who have been nominated for City Offices pursuant to Elections Code § 10229. At the August 14, 2024, meeting the City Council appointed Melissa Klundby as the City's Election Official and accepted a Certification of Insufficient Nominees from the Elections Official. Thereafter, on August 15, 2024, a Notice of Insufficient Nominees was posted on the City's website and in three (3) locations in the City that were freely accessible to the public. A copy of the Certification and Notice are also being provide the City Council.

During the City Council's August 14, 2024, meeting and discussion of the item to designate a City Elections Official, Lindsey Shaw asserted that I/the City improperly shortened the date for nomination papers to be filed and referenced Government Code Section 6707 in support of her assertion. In her prepared statement that she read from and distributed, Ms. Shaw cited Government Code section 6707 for the proposition that the filing deadline should have been extended to Monday, August 12, because the deadline should be extended to the next business day if the deadline falls on a weekend or holiday.

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III. Law and Analysis

Ms. Shaw's assertion is incorrect for two reasons. First, the deadline did not fall on a holiday or weekend. It fell on a Friday, a day on which City Offices were closed, i.e. – that Friday was not part of the City's "normal business hours as posted". (See Elections Code section 10224). Second, Government Code section 6707 does NOT apply to the City; it clearly and expressly applies only to state agencies. The City is not a state agency. Ms. Shaw did not address the applicability of that code section to state agencies only in her comments. Here is that code section in its entirety,

Government Code section 6707

"When the last day for filing any instrument or other document *with a state agency* falls upon a Saturday or holiday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed." (Emphasis added.)

The City properly relies on Elections Code Section 10224 which states that the nomination papers can be filed during normal business hours as posted up until the 88th day before the election. This code section does not provide for extending the filing period when the last day falls during non-normal business hours as posted. Here is that code section in its entirety,

Elections Code Section 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."

The City did not shorten the filing period. It informed the public that the effective date for filing was the 8th because the 9th was a day that City Hall was closed as posted at City Hall and on the City's website.

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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.



AGENDA No. 11

City of Portola

35 Third Avenue P.O. Box 1225

Portola, California 96122

Fax: (530) 832-5418

(530) 832-4216

www.ci.portola.ca.us

**CERTIFICATION OF INSUFFICIENT NOMINEES
FOR THE OFFICES OF CITY COUNCIL MEMBER,
CITY CLERK, AND CITY TREASURER**

FOR THE GENERAL MUNICIPAL ELECTION NOVEMBER 5, 2024

To the Honorable City Council.

I, Melissa Klundby, Elections Official for the City of Portola do hereby certify that pursuant to § 10229 of the Elections Code of the State of California the following facts relating to the General Municipal Election scheduled to be held on Tuesday, November 5, 2024.

As of the close of the nomination period on August 8, 2024, only one person has been nominated as a candidate for each of the following City offices: City Council Member At-Large (three positions), City Clerk, and City Treasurer.

The persons so nominated are:

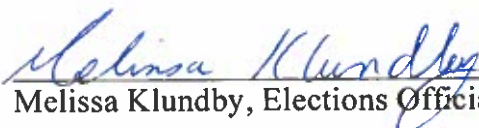
- Pat Morton - City Council Member At-Large
- Jim Murphy - City Council Member At-Large
- Mikki Brown - City Council Member At-Large
- City Clerk – Linda Cooley
- City Treasurer – Linda Cooley

That § 10229 of the Elections Code allows one of the following courses of action to be taken by the City Council or each office:

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.

A notice of these facts will be posted in three (3) places in the City as required. After the fifth day following the date of posting, the City Council will meet to either make the appointments or direct an election to be held. The persons appointed, if any, shall qualify and serve exactly as if elected at a municipal election for the office. If by the 75th day before the municipal election no person has been appointed to the offices pursuant to (1) or (2) above, the election shall be held.

If the City Council makes an appointment pursuant to § 10229 of the Elections Code, the Elections Official shall not accept for filing any statement of write-in candidacy which is made after the appointment is made.


Melissa Klundby, Elections Official

Dated: August 14, 2024



City of Portola

35 Third Avenue P.O. Box 1225

Portola, California 96122

Fax: (530) 832-5418

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**NOTICE OF INSUFFICIENT NOMINEES
FOR THE OFFICES OF CITY COUNCIL MEMBER,
CITY CLERK, AND CITY TREASURER**

FOR THE GENERAL MUNICIPAL ELECTION NOVEMBER 5, 2024

NOTICE IS HEREBY GIVEN, that pursuant to § 10229 of the Elections Code of the State of California relating to the General Municipal Election scheduled to be held on Tuesday, November 5, 2024.

As of the close of the nomination period on August 8, 2024, only one person has been nominated as a candidate for each of the following City offices: City Council Member At-Large (three positions), City Clerk, and City Treasurer.

The persons so nominated are:


- Pat Morton - City Council Member At-Large
- Jim Murphy - City Council Member At-Large
- Mikki Brown - City Council Member At-Large
- City Clerk – Linda Cooley
- City Treasurer – Linda Cooley

That § 10229 of the Elections Code allows one of the following courses of action to be taken by the City Council for each office:

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.

The City Council will meet on August 21, 2024, to either make the appointments or direct an election to be held. The persons appointed, if any, shall qualify and serve exactly as if elected at a municipal election for the office. If by the 75th day before the municipal election no person has been appointed to the offices pursuant to (1) or (2) above, the election shall be held.

If the City Council makes an appointment pursuant to § 10229 of the Elections Code, the Elections Official shall not accept for filing any statement of write-in candidacy which is made after the appointment is made.


Melissa Klundby, City Elections Official

Dated: August 14, 2024