



SPECIAL CITY COUNCIL Meeting Agenda

Tuesday, December 5, 2023

10:30 AM

City Hall Council Chamber

44950 Eldorado Drive, Indian Wells, CA 92210

Welcome to a meeting of the Indian Wells City Council.

Public Comments: *Members of the Public who wish to speak should fill out a blue slip and submit it to the City Clerk, comments are limited to 3 minutes. In accordance with State Law, remarks during public comment are to be limited to subjects within the City's jurisdiction.*

Notification: *If you are an individual with a disability and need a reasonable modification or accommodation pursuant to the Americans with Disabilities Act (ADA) please contact the City Clerk at 760-346-2489, 48 hours prior to the meeting.*

Please turn off all communication devices (phones) or put them on non-audible mode (vibrate) during Council proceedings. All documents for public review are available for public inspection at City Hall reception, 44-950 Eldorado Drive, Indian Wells during normal business hours.

A. CONVENE THE INDIAN WELLS CITY COUNCIL, PLEDGE OF ALLEGIANCE AND ROLL CALL

MAYOR DONNA GRIFFITH
MAYOR PRO TEM GREG SANDERS
COUNCIL MEMBER TY PEABODY
COUNCIL MEMBER BRUCE WHITMAN
COUNCIL MEMBER DANA REED

B. APPROVAL OF THE FINAL AGENDA

C. PUBLIC COMMENTS

Members of the Public who wish to speak on items listed on the special-agenda may do so at this time. Public comments are limited to 3 minutes. Speakers will be alerted when their time is up and no further comments will be permitted.

D. GENERAL BUSINESS

D.1 Review of Mayoral and Mayor Pro Tem Rotation Under Indian Wells Municipal Code Section 2.08.160

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RECOMMENDED ACTION:

Council **RECEIVES** and **FILES** the City Attorney's review of Mayoral and Mayor Pro Tem rotation under Municipal Code Section 2.08.160.

E. ADJOURNMENT

To a regularly scheduled meeting of the City Council to be held at 1:30 p.m. on December 7, 2023 in the City Hall Council Chamber.

Affidavit of Posting,

I, Angelica Avila, certify that on December 4, 2023 I caused to be posted a notice of a Special Council Meeting to be held on December 5, 2023 at 10:30 a.m. in the City Hall Council Chamber.

Notices were posted at Indian Wells Civic Center and City's Website [www.cityofindianwells.org]

Angelica Avila, City Clerk

INDIAN WELLS CITY COUNCIL

December 5, 2023



To: City Council
From: City Attorney
Prepared by: Todd Leishman, City Attorney
Subject: **Review of Mayoral and Mayor Pro Tem Rotation Under Indian Wells Municipal Code Section 2.08.160**

RECOMMENDED ACTIONS:

Council **RECEIVES** and **FILES** the City Attorney's review of Mayoral and Mayor Pro Tem rotation under Municipal Code Section 2.08.160.

DISCUSSION:

Annually, the City of Indian Wells conducts a rotation of City Council leadership. This report outlines this annual process as contained within the Indian Wells Municipal Code ("Municipal Code"). Section 2.08.160 of the Municipal Code governs succession of council leadership and was enacted and then amended by the voters by way of two measures, Measure Q (2012) and Measure I (2020), respectively. Under the amended section (attached), Mayoral and Mayor Pro Tem ("MPT") succession are determined as follows:

1. **Eligibility.** Only members of the Council who have "completed at least one ... year of service during his or her current continuous membership on the City Council" are eligible for appointment as mayor or MPT, unless no other no other member is able or willing to serve.¹
2. **Length of current service, without having been mayor.** The eligible member "having the longest current continuous membership on the City Council without serving as Mayor" has priority for appointment as mayor.²

Once the mayor is appointed, the MPT is selected from the remaining eligible members using the same criteria: The member "having the second longest current continuous membership on the City Council without serving as Mayor" has priority.³

¹ Indian Wells Municipal Code section 2.08.160(b)(5). All further references are to Section 2.08.160 unless otherwise noted.

² § (b)(1).

³ § (b)(2).

(Note, the criterion is not time without having been MPT. Priority for each position is determined by reference to service as mayor.)

3. **Service as mayor “during current continuous membership.”** As between two eligible members who are equally qualified under 2 above, a member who has not yet served as mayor “during the period of [that member’s] current continuous membership” has priority.

E.g., if two members have both served as mayor in the past, and if both began their period of current continuous membership at the same time, but one has not yet served as mayor during that period and the other has — the first has priority.⁴

4. **Most Votes.** If two eligible members are still tied for priority at that point, priority for appointment is determined by the number of votes that each member received “in his or her most recent election” to the Council: More votes gets higher priority.⁵
5. **Flip a Coin.** Finally, if priority is not established by steps 1–4 above, the member “whose name is then drawn by lot or other random procedure” is appointed mayor.⁶ If necessary, the process should be repeated for MPT.

These procedures normally result in a predictable order of succession, but with Measure I the voters added the possibility of a Councilmember deferring for a year and retaining priority.

Deferral Changes the Order

As the Council and public are aware, Indian Wells voters overwhelmingly approved Measure I in March 2020. The measure amended the code to allow a councilmember who has priority to serve as mayor or MPT, as established by the process described above, to defer appointment for one year.⁷

When that happens, priority for the declined position goes to the member with the highest priority among the remaining eligible councilmembers.⁸ The declining member remains in the “pool” of eligible members and retains priority for one year.⁹

⁴ § (b)(3).

⁵ § (b)(3).

⁶ § (b)(3).

⁷ § (e)(3)–(5).

⁸ § (b)(1)–(3).

⁹ § (e)(4)–(5).

Legal Advice and Council Interpretation and Appointment

Below is the City Attorney’s interpretation of Section 2.08.160, offered for the Council’s consideration. The Council has authority to interpret the code and to resolve any ambiguities. “It is well established that where the voters have altered their charter [or code] by initiative measure, but the terms of the amendment are ambiguous ... the legislative body may interpret the initiative in order to harmonize it with existing law.”¹⁰ The Council appoints the mayor and MPT, based on its interpretation.

City Attorney Interpretation as Applied to 2023–2024 Succession

Section 2.08.160 makes it clear that MPT Sanders has priority to serve as mayor now. However, some ambiguities in the code and the uniqueness of the 2022 election (e.g., special election, returning Councilmember whose continuous service was broken, but had previously served as mayor) have made the interpretation more challenging. This has resulted in the City Attorney’s view of who has priority to serve as MPT to evolve over the last few weeks with further research and analysis but is now settled: Councilmember Bruce Whitman has priority to serve as MPT.

MPT Sanders has priority to serve as mayor.

All five members of the current Council will have served for a year or more when the Council is reorganized later this month, so all are eligible.

Of the five, only MPT Sanders and Councilmember Whitman have not yet served as mayor. Councilmember Peabody has served as mayor twice already — in 2014–2015 and again in 2019–2020 — before returning to the Council in 2022 to serve the remaining two years of former Councilmember Kimberly Muzik’s full term after she moved. Councilmember Reed served as mayor in 2016–2017. Mayor Griffith is the current mayor. Because MPT Sanders has not yet served as mayor, and because he has a longer current continuous service on the Council than Councilmember Whitman, MPT Sanders has priority to serve as mayor now.

Council Member Whitman has priority to serve as MPT.

Initially, when considering who has priority to serve as MPT, the City Attorney’s office assumed that subsections (b)(1) and (b)(2) only take into account service as mayor during the current continuous membership on the Council, which would have given Councilmember Peabody “a blank slate” along with Councilmember Whitman.

With that assumption in mind, the City Attorney’s Office initially turned to the length of Councilmember Peabody’s and Councilmember Whitman’s current continuous

¹⁰ *Creighton v. City of Santa Monica* (1984) 160 Cal.App.3d 1011, 1021, citing *California Housing Finance Agency v. Patitucci* (1978) 22 Cal.3d 171, 178.

memberships: both were elected to the Council in 2022, so both would be equally qualified based on tenure.

Then the analysis turned to votes. Councilmember Peabody received the most votes in his most recent election (the November 2022 special election to fill Ms. Muzik's seat) and Councilmember Whitman received the most votes in his most recent election (the November 2022 *general* election, to fill two full four-year seats). Because they were not elected in the same election, the special election for the partial term being legally separate from the general election for the two full-term seats, under the votes test, Mr. Whitman and Mr. Peabody would be equally qualified, as they each received the most votes in *his* most recent election. If that is where the analysis had ended, Councilmembers Whitman and Peabody would be left subject to a coin flip, or to some other "random procedure," to establish priority as between themselves.

The voter's intent must guide.

But upon further consideration, the City Attorney's Office came to recognize two things:

First, there is a "scarcity" of opportunities to serve as mayor during a full four-year term. Not every member elected to a full term will have the opportunity to serve as mayor. There are not enough years.

And second, the references to mayoral service in subsections (b)(1) and (b)(2) differ from the reference in subsection (b)(3) in a potentially significant way. The latter refers unambiguously to service as mayor "during the period of current continuous membership," making plain that the mayoral service must have taken place *during* the current "continuous membership," not before. But subsections (b)(1) and (b)(2) are not phrased that way and lack the same clarity. They both use different language, referring to "The ... Member having the longest current continuous membership ... without serving as Mayor," which arguably leaves open the possibility that "without serving as Mayor" applies to the "Member" and not necessarily to the "membership."

Textual ambiguities should be interpreted against backdrop of the purpose statement in subsection (a), which states that Section 2.08.160's priority system is "intended to permit as many Council Members as possible to have an opportunity during their membership on the City Council to occupy the position of Mayor and Mayor Pro Tempore." We note that "membership" here is not qualified as "current continuous membership" as it is elsewhere in the section. We interpret this to mean that when in doubt, the priority system should be interpreted to give priority to members who have not ever served as mayor before, during any period of Council membership.

City Attorney's Office Interpretation of the Code

After reconsidering subsections (b)(1) and (b)(2), the textual differences between them and subsection (b)(3), and the purpose statement in subsection (a), the City Attorney settled on an interpretation of the code that gives highest priority to

1. eligible members who have not ever served as mayor, during any period of Council membership;
2. then to a member who has not yet served “during the period of current continuous membership”;
3. then to the member who received the most votes in his or her most recent election; and
4. then finally to the member who wins the coin toss.

In the City Attorney’s opinion, this interpretation is the most consistent with the voter’s intent with Measure Q of extending MPT and mayoral service opportunities to as many members as possible, as well as with the voter’s intent with Measure I of giving members at least a year of experience on the Council and then, presumably, a year in training as MPT before serving as mayor.

Conclusion for 2023–2024 Council Leadership Rotation

It is the City Attorney’s legal opinion that

- MPT Sanders has priority to serve as mayor and
- Councilmember Whitman has priority to serve as MPT this year.

As explained above, our office reached these conclusions based on the text of Section 2.08.160, as amended by the voters through Measures Q and I, as well as upon certain assumptions and inferences from the text.

The City Attorney provides this opinion and interpretation to aid the Council as it determines how to interpret and apply Section 2.08.160 and appoint a mayor and MPT on December 7.

ATTACHMENTS:

1. Municipal Code 2.08.160

§ 2.08.160. Appointment of Mayor and Mayor Pro Tempore.

- (a) It is the purpose and intent of this Section to provide for an automatic annual rotation of Council Members who occupy the positions of Mayor and Mayor Pro Tempore. The automatic annual rotation is further intended to permit as many Council Members as possible to have an opportunity during their membership on the City Council to occupy the position of Mayor and Mayor Pro Tempore. This Section shall not be amended or repealed without first obtaining the approval of a majority of those persons voting on any such proposed amendment or repeal at a general or special municipal election called for this purpose.
- (b) At the first regular meeting of the City Council in December of each year, or as soon thereafter as reasonably possible in the event any newly elected Council Members have not yet taken office due to delayed certification of election results, the City Council shall appoint from among the Council Members the Mayor and the Mayor Pro Tempore to immediately assume those positions, as applicable. Appointment to the position of Mayor and Mayor Pro Tempore shall be made on a rotating basis among all Council Members as follows, and the Mayor and Mayor Pro Tempore shall serve until their applicable successor is appointed or they resign or vacate the applicable position due to inability to fulfill the responsibilities of that position, as defined in subsection (c):
- (1) The Council Member having the longest current continuous membership on the City Council without serving as Mayor shall be appointed Mayor.
 - (2) The Council Member having the second longest current continuous membership on the City Council without serving as Mayor shall be appointed Mayor Pro Tempore.
 - (3) If two or more Council Members equally qualify hereunder for appointment as Mayor, any Council Member who has not previously served as Mayor during the period of current continuous membership of the qualified Council Member shall be appointed Mayor; and if two or more Council Members thereafter equally qualify hereunder for appointment as Mayor, the Council Member who received the most votes among them in his or her most recent election to Council shall be appointed Mayor, and the Council Member who received the second most votes among them in his or her most recent election to Council shall be appointed Mayor Pro Tempore; and if two or more Council Members thereafter equally qualify hereunder for appointment as Mayor, the Council Member whose name is then drawn by lot or other random procedure shall be appointed Mayor, and the other Council Member shall be appointed Mayor Pro Tempore.
 - (4) If two or more Council Members equally qualify hereunder for appointment as Mayor Pro Tempore, the appointment of Mayor Pro Tempore shall be made in accordance with the same priority and criteria as otherwise set forth for appointment as Mayor in subsection (b)(3).
 - (5) A Council Member shall not be eligible for appointment as Mayor or Mayor

Pro Tempore until he or she has first completed at least one year of service during his or her current continuous membership on the City Council, unless no other Council Member can otherwise assume the position of Mayor or Mayor Pro Tempore due to inability to fulfill the responsibilities of that position, as that term is defined in subsection (c) or due to other qualifying Council Members declining an appointment to the position as set forth in subsection (d).

- (6) If the position of Mayor becomes vacant due to inability to fulfill the responsibilities of that position, as that term is defined in subsection (c), the Mayor Pro Tempore shall be appointed Mayor for the remainder of that term of Mayor, and shall be reappointed Mayor for the next full term of the position of Mayor if then qualified hereunder, unless he or she declines either appointment. Notwithstanding subsection (b)(5), the Mayor Pro Tempore shall be appointed to the position of Mayor even if, at the time the position of Mayor becomes vacant, he or she has not completed at least one year of service during his or her current continuous membership on the City Council.
 - (7) If the position of Mayor Pro Tempore becomes vacant due to inability to fulfill the responsibilities of that position, as that term is defined in subsection (c), the Council Member next qualified to become Mayor Pro Tempore shall be appointed Mayor Pro Tempore for the remainder of that term of Mayor Pro Tempore, and shall be reappointed Mayor Pro Tempore for the next full term of the position of Mayor Pro Tempore if then qualified hereunder, unless he or she declines the appointment.
- (c) A Council Member shall not be appointed Mayor or Mayor Pro Tempore, as applicable, and the Mayor or Mayor Pro Tempore shall be deemed to have vacated their position, as applicable, due to inability to fulfill the responsibilities of that position. As used in this Section, the term “inability to fulfill the responsibilities of that position” shall mean at least one of the following:
- (1) Unexcused absences from more than four regular or special City Council meetings within the 12 month period prior to appointment as Mayor or Mayor Pro Tempore, as applicable, or during the period of service as Mayor or Mayor Pro Tempore, as applicable;
 - (2) Resignation from the position of Mayor or Mayor Pro Tempore, as applicable;
 - (3) Death, or physical incapacity due to medical condition severely limiting the ability of the Mayor or Mayor Pro Tempore, as applicable, to perform ongoing duties assigned to them by City policy or the City Council;
 - (4) Mental incapacity (such as by reason of severe stroke, serious head injury, serious nervous breakdown, or serious mental illness) of the Council Member otherwise qualified hereunder to be appointed to, or serve in the applicable position of Mayor or Mayor Pro Tempore, as reasonably determined at a public meeting by a majority of the full membership of the City Council;

- (5) Upon the case-by-case determination by the City Council, in its discretion, to apply the following to the appointment, or removal, as applicable, of the Mayor or Mayor Pro Tempore, as applicable, via a censure resolution adopted at a public meeting by a majority of the full membership of the City Council, resulting from either: (i) a repeated failure of the Mayor or Mayor Pro Tempore, as applicable, to represent the City Council's adopted positions when representing the City, and not him or herself individually, after the City Council had first provided a written warning concerning such failure; or (ii) a violation of a any requirement of law pertaining to conduct by public officials, other than as set forth in subsection (c)(6), as determined by final decision of a governmental commission, agency or officer not a part of the City;
- (6) Arrest while serving as Mayor or Mayor Pro Tempore, as applicable, for a felony or any crime of violence or moral turpitude; provided that if and when the prosecution of such felony or other crime is dismissed or otherwise terminated without a plea agreement or conviction, then the Council Member shall thereafter be placed in the highest priority behind the Mayor or Mayor Pro Tempore, as applicable, as otherwise set forth in subsection (b).
- (d) A Council Member who currently serves as Mayor or Mayor Pro Tempore may resign that position at any time during his or her term. Further, a Council Member who otherwise qualifies shall not be appointed Mayor or Mayor Pro Tempore if he or she voluntarily declines the appointment to the applicable position.
- (e) If a Council Member vacates the position of Mayor or Mayor Pro Tempore, or declines an appointment to either position, the following rules shall apply:
 - (1) If the Council Member currently serves as Mayor or Mayor Pro Tempore, as applicable, and vacates that position due to: (i) resignation; (ii) physical disability; or (iii) mental disability, as set forth in subsections (c)(2), (3) and (4) above, and so vacates during the first six months of his or her term, the Council Member shall retain priority under subsection (b) for a future appointment as Mayor or Mayor Pro Tempore, as applicable, based upon the Council Member's time of continuous service on the Council since his or her last appointment to the position of Mayor or Mayor Pro Tempore, as applicable. If the Councilmember so vacates during the last six months of his or her term, the Council Member shall not retain priority under subsection (b) for a future appointment as Mayor or Mayor Pro Tempore, as applicable, and only the Council Member's time of continuous service on the Council accruing after so vacating shall count toward any future appointment under subsection (b).
 - (2) If the Council Member currently serves as Mayor or Mayor Pro Tempore, as applicable, and vacates that position due to: (i) unexcused absences from Council meetings; or (ii) removal by the City Council via censure resolution, as set forth in subsection (c)(1) and (5), the Council Member shall not retain priority under subsection (b) for a future appointment to the position of Mayor or Mayor Pro Tempore, as applicable, and only the Council Member's time of

continuous service on the Council accruing after so vacating shall count toward any future appointment under subsection (b).

- (3) If the Council Member has never served as Mayor or Mayor Pro Tempore, as applicable, and the Council Member declines an appointment to that position for the first time, the Council Member shall retain priority under subsection (b) for a future appointment as Mayor or Mayor Pro Tempore, as applicable, based upon the Council Member's time of continuous service on the Council.
 - (4) If the Council Member has never served as Mayor or Mayor Pro Tempore, as applicable, and the Council Member declines an appointment to that position for a second time, the Council Member shall not retain priority under subsection (b) for a future appointment as Mayor or Mayor Pro Tem, as applicable, and only the Council Member's time of continuous service on the Council accruing after his or her second declining of said appointment shall count toward any future appointment to that position under subsection (b). Notwithstanding the above, a Council Member who declines a second appointment shall still be deemed to have satisfied the minimum one-year Council service requirement for any future appointment under subsection (b)(5).
 - (5) If the Council Member has previously served as Mayor or Mayor Pro Tempore, as applicable, during his or her current continuous membership on the City Council, and is later nominated to that position again, the Council Member may decline the appointment once and retain priority for a future appointment as set forth in subsection (e)(3), based upon the Council Member's time of continuous service on the Council since last serving as Mayor or Mayor Pro Tempore, as applicable. If he or she declines the appointment a second time, the Council Member shall not retain priority for a future appointment as set forth in subsection (e)(4).
- (f) As used in this Section, the terms "qualify," "qualified" and "qualify hereunder" mean that a Council Member meets the priority and criteria established for selection as Mayor or Mayor Pro Tempore, as applicable, as set forth in subsection (b).
(Ord. 666 § 1, 2012; Ord. 729 § 1, 2020)