

INDIAN WELLS CITY COUNCIL

December 19, 2024



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

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; and

FINDS the action exempt from California Environmental Quality Act (CEQA) review under CEQA guidelines section 15061(b)(3).

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. 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.
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.

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. (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. **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. **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. 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.

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

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.” The Council appoints the mayor and MPT, based on its interpretation.

As was stated in connection with prior rotation, it is the City Attorney’s interpretation that Section 2.08.160 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

City Attorney Interpretation as Applied to 2024–2025 Succession

It is the City Attorney’s legal opinion that MPT Whitman has priority to serve as mayor, with Councilmember Reed having priority to serve as MPT.

MPT Whitman has priority to serve as mayor.

Only three of the five members of the current Council will have served for a year or more when the Council is reorganized on December 19, 2024, so only those three will be eligible to serve as mayor or MPT. Neither Councilmembers-elect Topper nor Councilmember-elect Penna will yet have “completed at least one ... year of service during his ... current continuous membership on the City Council,” so they will not yet be eligible to serve as mayor or MPT.

Of the three remaining members, only MPT Whitman has not yet served as mayor. Greg Sanders is currently serving as mayor, and Dana Reed served as mayor immediately before Mayor Sanders.

Because MPT Whitman is eligible and has not yet served as mayor, he has priority to serve as mayor now.

Councilmember Reed has priority to serve as MPT.

With the two new Councilmembers-elect being not yet eligible, Dana Reed has priority to serve as MPT because as between him and Greg Sanders, Mr. Reed has the most time since serving as mayor (Mr. Sanders having just completed a year as mayor).

City Attorney Interpretation as Applied to 2025–2026 Succession

Councilmember-elect Taylor has priority to serve as mayor and Councilmember-elect Penna has priority to serve as MPT starting in December 2025.

By then, both will have “completed at least one ... year of service during his ... current continuous membership on the City Council,” so both will have become eligible to serve as mayor or MPT.

Neither will have ever served as mayor before and both will have the same length of continuous service on the Council without having served as mayor. So priority to serve

as mayor will go to the member who received the most votes in his most recent election, and priority to serve as MPT will go to the other.

According to the certified election results, Mr. Taylor received more votes than Mr. Penna in the November 2024 election, so Mr. Taylor will have priority to serve as mayor, and Mr. Penna will have priority to serve as MPT.

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 19.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

The action is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly; and that the action is nonetheless exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. (14 CCR 15061(b)(3).)

ATTACHMENTS:

1. Municipal Code 2.08.160