



SPECIAL TOWN COUNCIL MEETING STAFF REPORT

MEETING DATE: May 29, 2024
PREPARED FOR: Mayor and Town Council
PREPARED BY: Heather Abrams, Town Manager and Janet Coleson, Town Attorney
SUBJECT: Adopt a Resolution Calling for the Placement of a Measure on the November 5, 2024, Ballot to Change the Town Clerk Position from Elected to Appointed

RECOMMENDATION

Adopt the Resolution to place a measure on the November 5, 2024, ballot for the Town of Fairfax to change the Town Clerk position from elected to appointed.

EXECUTIVE SUMMARY

This staff report recommends that the Council adopt a resolution to place a measure on the November 5, 2024, ballot. This measure would allow Fairfax voters to choose whether the Town Clerk position continue as an elected position or transition from an elected to an appointed role. If voters choose to make the position appointed, this will address reduce future election costs, reduce inefficiencies in the Clerk's office, and address significant recruitment challenges of requiring a town resident to fill this role.

BACKGROUND

State law requires each city to have a City Clerk and City Treasurer, either elected or appointed. The office of Town Clerk is currently an elected position in Fairfax. Government Code Section 36508 provides that the Town Council may submit ballot measures to the voters asking whether the office of Town Clerk shall be appointive. If approved by a majority of the voters voting on the measure, the Town Council shall appoint a Town Clerk at the expiration of the terms of the incumbent officer (i.e., in December 2026) or when the position becomes vacant, whichever occurs first. Government Code Section 36510 allows the Town Council the option to adopt an ordinance to vest appointment authority with the Town Manager.

The Town Clerk position currently is filled by Michele Gardner. The current term for Town Clerk expires in 2026.

Over the years, the Town Clerk position has become highly technical as additional requirements have been placed on the role at the State legal level. Gone are the days when the Clerk simply took minutes and called the role at Council Meetings. Today's Clerks are responsible for ensuring the law is followed and the public is informed regarding elections filings, public records requests, document management, parliamentary procedures, the Brown Act transparency body of law, and other required filings and trainings among Council and staff.

Town Code and State law have no formal accountability or responsibility requirements identified for the Town Clerk; thus they do not cover the necessary job duties of the paid professional Clerk's office. An elected Town Clerk does not need to possess any specific skills or experience, as the only legal

requirements are being a Fairfax resident and over 18 years old. This can lead to inefficiencies and increased burdens on other staff members who must assist with the Clerk's duties.

The current elected Town Clerk has delegated all duties to the paid professional Clerk. Previous to her retirement as the paid professional Clerk, the elected Town Clerk was recruited as a paid professional and the job recruitment stated, "Fairfax resident preferred". The Town was lucky to find a resident who was interested, available, and qualified for the position. Residency requirements for paid positions are no longer compliant with Personnel law. The pool of candidates interested in the elected Town Clerk position, which is unpaid, is limited, with many previous Town Clerk elections having only one candidate, uncontested.

ANALYSIS

Elections Code Section 9222 authorizes the Town Council "... to submit to the voters, without a petition therefor, a proposition for the repeal, amendment, or enactment of any ordinance, to be voted upon at any succeeding regular or special city election. . . "

The law provides one remaining date this year upon which to place such a ballot measure – November 5, 2024.

A Resolution is attached to this staff report which would place the measure on the November 5, 2024, election date. The final date to place a measure on the November 5, 2024, General Municipal Election/Presidential General Election is August 9, 2024.

DISCUSSION

The Town of Fairfax elected clerk retains only ceremonial duties. The current elected Town Clerk supports the recommended ballot measure. An appointed clerk would allow for screening of qualified professional candidates, increase efficiency by appointing a clerk who is able to share in the day-to-day duties of the Clerk's Office, and save the taxpayer money associated with election costs.

Inefficiencies of an Elected Town Clerk

- **Limited Candidate Pool:** Requiring the Town Clerk to be a town resident significantly limits the pool of qualified candidates. The increasing cost of living exacerbates this issue.
- **No Qualifications Required:** The absence of experience or educational requirements can result in less qualified individuals holding the position.
- **Lack of Accountability:** The elected position does not have formal mechanisms for accountability or responsibility.
- **Unpaid Position:** As the role is unpaid, it may not attract individuals with the necessary skills and dedication.

Comparisons with Other Jurisdictions

Nearly 80% of California municipalities have transitioned from elected to appointed Town Clerk positions to ensure higher efficiency and accountability. These municipalities report improved operational efficiency and better public service outcomes.

Proposed Measure

The resolution before the Town Council would place a measure on the November 5, 2024, ballot to ask the voters of Fairfax to change the Town Clerk position from elected to appointed. This change would allow for the screening of qualified professional candidates, increase efficiency, and save taxpayer money associated with election costs.

COMMUNITY OUTREACH

Public outreach will be essential to inform and engage the community about the proposed change. The Town can provide information but cannot campaign for any ballot measure.

FISCAL IMPACT

There is no direct fiscal impact associated with placing this measure on the ballot because this will be a consolidated election.

ATTACHMENTS

Resolution Submitting to the Qualified Voters of the Town of Fairfax A Measure Adding Chapter 2.10 to Title 2 of the Fairfax Municipal Code to Change the Office of Town Clerk from An Elected Office to An Appointed Office; At A General Municipal Election to Be Consolidated with The Statewide General Election to Be Held on November 5, 2024; And Setting Rules and Deadlines for the Submittal of Arguments for And Against the Measure

RESOLUTION NO. 24-___

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX SUBMITTING TO THE QUALIFIED VOTERS OF THE TOWN OF FAIRFAX A MEASURE ADDING CHAPTER 2.10 TO TITLE 2 OF THE FAIRFAX MUNICIPAL CODE TO CHANGE THE OFFICE OF TOWN CLERK FROM AN ELECTED OFFICE TO AN APPOINTED OFFICE; AT A GENERAL MUNICIPAL ELECTION TO BE CONSOLIDATED WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON NOVEMBER 5, 2024; AND SETTING RULES AND DEADLINES FOR THE SUBMITTAL OF ARGUMENTS FOR AND AGAINST THE MEASURE

WHEREAS, pursuant to California Government Code section 36501(c), the office of the Fairfax Town Clerk is currently an elected office; and

WHEREAS, the office of Town Clerk stands for election every four years, the last election for this office being November 8, 2022, and the current term for this office will expire in November 2026; and

WHEREAS, California Government Code sections 36508 and 36510 provide that:

“At any municipal election, or a special election held for that purpose, the City Council may submit to the electors the question whether the elective officers, or any of them except council members, shall be appointed by the City Council; provided, however, that the City Council shall not submit such question to the electors more often than once in an 11-month period.

.

If a majority of the votes cast on the proposition is for it, the City Council shall appoint such officers at the expiration of the terms of the officers then in office, and on a vacancy in any such office. Such officers shall hold office during the pleasure of the City Council and, notwithstanding [Government Code] Section 36502 to the contrary, are not required to be residents or electors in the city. The City Council may by ordinance vest in the city manager its authority to appoint such officers.”

WHEREAS, California Elections Code section 9222 authorizes the Town Council to submit local measures to the voters; and

WHEREAS, the Town Council desires to submit to Fairfax voters a measure that would change the office of Town Clerk from an elected office to an appointed office; and

WHEREAS, the question of an appointed Town Clerk has not been submitted to Fairfax voters within the last 11 months; and

WHEREAS, the Town Council desires to consolidate the General Municipal Election for the ballot measure described herein with the Statewide General Election to be held on November 5, 2024; and

WHEREAS, the Town Council further desires to set rules and deadlines for the submittal of written arguments and rebuttals for and against the measure; and

WHEREAS, the specific terms of the measure are provided for in the ordinance to be considered by the qualified voters, attached hereto as Exhibit “A” (the “Ordinance” or “Measure”) and by this reference made an operative part hereof, and in accordance with all applicable laws.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF FAIRFAX, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. Recitals. The Town Council of the Town hereby finds and determines that the foregoing recitals are true and correct, are incorporated herein and by this reference made an operative part hereof.

SECTION 2. Submission of Ballot Ordinance/Measure. The Town Council of the Town, pursuant to its right and authority as contained in California Elections Code section 9222 and Government Code section 36508, hereby orders the Ordinance/Measure attached hereto as Exhibit “A” to be submitted to the qualified voters of the Town at the General Municipal Election to be held and consolidated with the Statewide General Election on Tuesday, November 5, 2024. The proposed Ordinance shall be in the form attached hereto as Exhibit “A” to this Resolution and is incorporated by this reference as if fully set forth herein.

SECTION 3. Ballot Question. The Town Council, pursuant to its right and authority under California Government Code section 36509(b), does hereby order that the ballot question shall be presented and printed upon the ballot submitted to the qualified voters in the manner and form set forth in this Section 3. On the ballot to be submitted to the qualified voters at the election to be held at the General Municipal Election to be consolidated with the Statewide General Election on Tuesday, November 5, 2024, in addition to any other matters required by law, there shall be printed substantially the following ballot question:

"Shall the office of Fairfax Town Clerk be appointive?"	YES	
	NO	

SECTION 4. Election Procedures/Request for Consolidation.

- A. The Town Council consents to the consolidation of the election on this Measure with all other elections being held in the same territory on November 5, 2024, and to hold and conduct the consolidated election in the manner prescribed in Election Code Section 10418.
- B. The ballots to be used at the election shall be in the form and content as required by law.
- C. In accordance with Section 10403 of the Elections Code, the Board of Supervisors of Marin County is hereby requested to consent to consolidation of the election on this Measure with the Statewide General Election and all other elections being held in the same territory on November 5, 2024, and to having the Registrar of Voters render such election services to the Town of Fairfax as may be requested by the Town Clerk’s Office of said Town, the County of Marin to be reimbursed in full for such services as are performed.
- D. The election services which the Town of Fairfax requests the Registrar of Voters, or such other official as may be appropriate, to perform and which such officer is hereby authorized and directed to perform, if said Board of Supervisors consents, include: the preparation, printing and mailing of sample ballots and voter information guides; the establishment or appointment of precincts, voting centers, and election officers, and making such publications

as are required by law in connection therewith; the furnishing of ballots, voting booths and other necessary supplies or materials for voting centers; the canvassing of the returns of the election and the furnishing of the results of such canvassing to the Town Clerk's Office of the Town of Fairfax; and the performance of such other election services as may be requested by the Town Clerk.

- E. The Town Clerk's Office is authorized, instructed and directed to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia, or cause such actions to be made, that may be necessary in order to properly and lawfully conduct the election.
- F. That the precincts, ballot drop box locations and hours of operations, vote center locations and hours of operations, vote-by-mail procedures and timing, and election officers, and all other persons and procedures for the General Municipal Election shall be the same as those utilized by the County of Marin; and
- G. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections in the Town.
- H. Notice of the time and place of holding the election is given and the Town Clerk's Office is authorized, instructed and directed to give further or additional notice of the election, in time, form, and manner as required by law.
- I. All ballots shall be tallied at a central counting place and not at the precincts. Said central counting place shall be at a County center as designated by the Registrar of Voters.
- J. The Marin County Registrar of Voters is hereby authorized to canvass the returns of said election.
- K. The Town Clerk's Office of the Town of Fairfax shall receive the canvass as it pertains to the election on the measure, and shall certify the results to the Town Council, as required by law.

SECTION 5. Arguments and Analysis.

- A. The Town Council authorizes (i) the Town Council or any member(s) of the Town Council, (ii) any individual voter eligible to vote on the above measure, (iii) a bona fide association of such citizens or (iv) any combination of voters and associations, to file a written argument in favor of or against the Town measure, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California and may change the argument until and including **August 19, 2024, at 4:00 p.m.** after which no arguments for or against the measure may be submitted to the Town Clerk. Arguments in favor of or against the measure shall each not exceed 300 words in length. Each argument shall be filed with the Town Clerk, signed, and include the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers who is the author of the argument.
- B. The Town Clerk shall comply with all provisions of law establishing priority of arguments for printing and distribution to the voters and shall take all necessary actions to cause the selected arguments to be printed and distributed to the voters.

- C. Pursuant to Section 9280 of the Elections Code, the Town Council directs the Town Clerk's Office to transmit a copy of the measure to the Town Attorney. The Town Attorney shall prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure. The Town Attorney shall transmit such impartial analysis to the Town Clerk's Office, who shall cause the analysis to be published in the ballot pamphlet along with the ballot measure as provided by law. The Impartial Analysis shall be filed by the deadline set for filing of primary arguments as set forth in subsection (A) above. The impartial analysis shall include a statement indicating whether the measure was placed on the ballot by a petition signed by the requisite number of voters or by the Town Council. In the event the entire text of the measure is not printed on the ballot, nor in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10-font bold type, the following: **"The above statement is an impartial analysis of Ordinance or Measure _____. If you desire a copy of the ordinance or measure, please call the election official's office at (415) 458-2343 and a copy will be mailed at no cost to you."**

SECTION 6. Rebuttals.

- A. That pursuant to Section 9285 of the Elections Code of the State of California, when the Clerk's Office has selected the arguments for and against the various Town initiated measures which will be printed and distributed to the voters, the Clerk's Office shall send copies of the argument in favor of the measures to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. The authors or persons designated by them may prepare and submit rebuttal arguments not exceeding 250 words. The rebuttal arguments shall be filed with the Town Clerk's Office not later than **August 26, 2024, at 4:00 p.m.** Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.
- B. That the provisions herein shall apply only to the election to be held on November 5, 2024, and shall then be repealed.

SECTION 7. Placement on the Ballot. The full text of the Ballot Ordinance shall be printed in the voter pamphlet, and a statement shall be printed in the ballot pursuant to Section 9223 of the Elections Code advising voters that they may obtain a copy of this ordinance, the Ballot Ordinance and/or ballot measure, at no cost, upon request made to the Town Clerk's Office.

SECTION 8. Delivery of Resolution to County. The Town Clerk's Office shall certify to the passage and adoption of this Resolution and enter it into the book of original resolutions. The Town Council directs the Town Clerk's Office to deliver copies of this Resolution, including the Ballot Ordinance attached hereto as Exhibit "A", to the Clerk of the Board of Supervisors of Marin County and to the Registrar of Voters of Marin County not later than 88 days prior to the General Municipal Election.

SECTION 9. CEQA. The Town Council hereby finds and determines that the ballot measure relates to organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment, and therefore is not a project within the meaning of the California Environmental Quality Act ("CEQA") and the State CEQA Guidelines, section 15378(b)(5).

SECTION 10. Severability. If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Town Council hereby declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion thereof.

SECTION 11. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption.

ADOPTED ON MAY 29, 2024.

ATTEST:

BARBARA COLER
MAYOR

CHRISTINE FOSTER
DEPUTY TOWN CLERK

I, Christine Foster, Deputy Town Clerk of the Town of Fairfax, hereby certify that Resolution No. 24-__ is a full, true, and correct copy, and was duly adopted at a meeting of the Town Council of the Town of Fairfax on Wednesday, May 29, 2024, by the following vote:

AYES:
NOES:
ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Town of Fairfax, California, on _____.

CHRISTINE FOSTER
DEPUTY TOWN CLERK

EXHIBIT “A”

ORDINANCE NO. 24-____

AN ORDINANCE OF THE PEOPLE OF THE TOWN OF FAIRFAX, CALIFORNIA, ADDING CHAPTER 2.10 TO TITLE 2 OF THE FAIRFAX MUNICIPAL CODE TO CHANGE THE OFFICE OF TOWN CLERK FROM AN ELECTED OFFICE TO AN APPOINTED OFFICE.

NOW THEREFORE, THE PEOPLE OF THE TOWN OF FAIRFAX DO ORDAIN AS FOLLOWS:

SECTION 1. Subject to the approval of a majority of the voters of the Town of Fairfax at the scheduled election so designated by the Town Council in a separate resolution placing this proposal on the ballot for such election, Chapter 2.10 is hereby added to Title 2 of the Fairfax Municipal Code and shall read as follows:

[NOTE: deletions are identified in ~~strikeout text~~ and additions are identified in ***bold italics***]

"TITLE 2: ADMINISTRATION AND PERSONNEL.

CHAPTER 2.10 – APPOINTED TOWN CLERK

§2.10.010 – Appointed Position of Town Clerk.

As of the November 3, 2026 General Municipal Election, or such earlier time should a vacancy occur in the office prior to said Election, the office of the Town Clerk shall be cease to be elected and shall become an appointive office. Pursuant to California Government Code section 36510, such appointive officer shall hold office during the pleasure of the Town Council and, notwithstanding Government Code section 36502 to the contrary, shall not be required to be a resident or elector in the Town. The Town Council may by subsequent ordinance vest in the Town Manager its authority to appoint such officer.”

SECTION 2. If any portion of this Ordinance is declared invalid by a court of law or other legal body with applicable authority, the invalidity shall not affect or prohibit the force and effect of any other provision or application of the Ordinance that is not deemed invalid. The voters of the Town hereby declare that they would have circulated for qualification and/or voted for the adoption of this section, and each portion thereof, regardless of the fact that any portion of the initiative may be subsequently deemed invalid.

SECTION 3. To the fullest extent allowed by law, the provisions of this Ordinance shall prevail over, and supersede, all other provisions of the Municipal Code and any ordinances, resolutions or administrative policies of the Town of Fairfax which are in conflict with any provision of this Ordinance.

SECTION 4. This section shall not be repealed or amended except by a measure approved by a majority of the electors voting on the issue at a General Municipal Election or at a special election called for that purpose.

SECTION 5. This Ordinance shall take effect only if approved by a majority of the eligible voters of the Town of Fairfax voting at a General Municipal Election to be held on November 5, 2024, and shall take

effect ten (10) days after the Town Council has certified the results of the General Municipal Election by resolution.

SECTION 6. The Mayor is hereby authorized to attest to the adoption of this Ordinance by the People voting thereon on November 5, 2024, by signing where indicated below.

I hereby certify that the foregoing Ordinance was passed, approved and adopted by the People of the Town of Fairfax on the 5th day of November, 2024.

ADOPTED ON _____ 2024.

ATTEST:

BARBARA COLER
MAYOR

CHRISTINE FOSTER
DEPUTY TOWN CLERK