Capitola City Council

Agenda Report

Meeting: August 27, 2026

From: City Attorney's Office

Subject: Discussion Regarding Residency Requirements for Elective Office

Recommended Action: Discuss residency requirements for elective office and provide direction to staff.

Background: The City has received various comments and inquiries regarding residency requirements for elective office. Under California law, the qualifications for municipal office are limited. Candidates must be registered voters and residents of the jurisdiction at the relevant time, such as when nomination papers are issued (Gov. Code, § 36502, subd. (a); Elec. Code, § 3231, subd. (a)). These requirements reflect a state-established baseline, and general law cities are not permitted to expand these qualifications in a manner that conflicts with or adds to the state statutory scheme.

Currently, candidates for elected office are required to certify under penalty of perjury that they reside within City limits on nomination papers and the County Registrar of Voters confirms the candidate is registered to vote at the listed address (See, e.g., Elec. Code, §§ 8040, 8041). Once elected, officeholders file an annual Form 700 that lists and reaffirms their residence.

Residency must be maintained throughout the officeholder's term: "[i]f, during his or her term of office, he or she moves his or her place of residence outside of city limits or ceases to be an elector of the city, his or her office shall immediately become vacant" (Gov. Code, § 36502, subd. (a)). In other words, "[a] person may not be a council member of a general law city unless the person resides within city boundaries when nomination papers are issued, at the time of assuming office, and throughout the term of office. For this purpose, 'residence' means 'legal residence' or 'domicile.'" (Cal. Atty. Gen. Opn. 15-1101, p. 4.)

A person's legal residence is defined as a place of "physical presence plus an intention to make [the] place a permanent home" (*Fenton v. Board of Directors* (1984) 156 Cal.App.3d 1107, 1116; see Elec. Code, §§ 349, subd. (b), 2021, subd. (b); Gov. Code, § 244, subd. (a)). In short, there is a two-prong inquiry that looks at where the person physically resides and what the person intends to serve as a permanent residence. There is an objective component and a subjective component.

Notably, the definition of residency under state law does not impose a minimum duration for occupancy (See, e.g., *Thompson v. Mellon* (1973) 9 Cal.3d 96, 97 [invalidating a two-year durational residency requirement as unconstitutional]).

Discussion: The City Council may consider whether and how to address residency concerns. However, it is preempted from redefining residency or unduly burdening the right to run for or hold elective office.

The most legally defensible residency "verification" programs allow candidates and officeholders to voluntarily submit proof of residency at regular intervals. Such a program would require flexibility in implementation. That means the City should not require only one specific type of document as proof, and it should not automatically disqualify someone just because they do not meet a strict paperwork checklist. Under this program, candidates would confirm they live in the City by signing a sworn statement when they file to run for office. Officeholders would sign the same statement again from time to time (for example, once a year or if district lines change). They can provide documents if they want, and if any questions come up, they get a chance to correct or clarify the information.

Signed statements made under oath can be accepted as proof on their own or along with other documents, which supports a flexible verification process that does not require only one specific type of proof.

Key elements of this type of policy would include a standard affidavit form, a list of example documents someone *may* provide (not required), a full, common-sense review of all available information if someone raises a concern or something looks suspicious, and an explicit statement that failure to provide specific documents is not automatic grounds for exclusion.

For implementation, the City should clearly assign responsibilities and adopt a policy that includes forms and deadlines that fit the election calendar. All verification steps should be timed to match nomination and ballot deadlines, with clear response and cure periods that do not interfere with required election milestones. The policy should make it clear that investigation/enforcement of residency requirements requires direction by the City Council.

The process should include notice and a chance to fix or clarify information. The City should also protect privacy by collecting only what is necessary, relying mainly on sworn affidavits and narrowly focused document requests, redacting sensitive information, and limiting access to those who need it. Records should be kept and destroyed according to the City's records retention schedule relating to elections.

Fiscal Impact: Unclear; if the City Council elects to create a residency verification program, there may be some implementation costs related to staff time to review, redact, and process materials submitted.

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