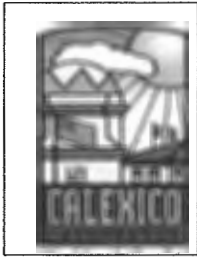


**AGENDA
ITEM**

12



AGENDA STAFF REPORT

DATE: January 9, 2019

TO: Mayor and Councilmembers

APPROVED BY: David Dale, City Manager *DD*

PREPARED BY: Carlos Campos, City Attorney

SUBJECT: Filling the Vacancy on the City Council by either, 1) Appointment, or 2) calling an election.

Recommendation:

1. Determine whether to fill the anticipated vacancy on the City Council by appointment or election.
2. If the position is to be filled by appointment, provide direction to staff regarding the desired method of selecting an appointment.

Background:

Mayor Pro Tem Jesus Eduardo Escobar was elected on November 6, 2018 to represent District 1 as County Supervisor. Mr. Escobar tendered his resignation letter to the City Clerk on January 2, 2019 effective January 3, 2019. As a result, his seat on the City Council has been vacated.

Legal Analysis:

The procedure to fill a City Council vacancy is set forth in California Government Code Section 36512.

"If a vacancy occurs in an elective office provided for in this chapter, the council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy." (Govt. Code §36512(b))

The Council may call for a special election. A person elected to fill a vacancy holds office for the unexpired term of the former incumbent regardless of when the vacancy occurred.

The City Council may also fill the seat by appointment in lieu of a special election.¹ The law imposes no supermajority requirement to appoint a successor - simple majority action is sufficient to appoint. However, a vacancy appointment may not be made if the appointment would result in a majority of the



¹ Appointment is not an option if a City has adopted an ordinance requiring a special election. Govt. Code §36512(c). Calexico has not adopted such an ordinance so this limitation does not apply.

Councilmembers having been appointed. If that is the case, the vacancy must be filled at either a special election or the next general municipal election. (Govt. Code §36512(d))

The maximum term of a Council appointment depends upon when the vacancy occurs:

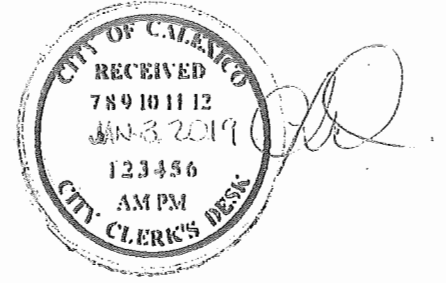
- If the vacancy occurs in the first half of a term of office and with at least 130 days remaining until the next general municipal election, the person appointed only holds office until the next general municipal election. A vacancy appointment in this situation cannot be longer than two years. The Council seat is then up for election for a two year term (a special "mid-term" election for that seat). Two years later, the seat will revert back to its regular four-year election term and cycle.
- If the vacancy occurs in either (i) the first half of a term of office, but with less than 130 days prior to the next general municipal election, or (ii) if the vacancy occurs in the second half of a term of office, the person appointed to fill the vacancy holds office for the unexpired term of the former incumbent. The regular four-year election term and cycle for this seat remain unchanged.

The entire Calexico City Council was elected to their current terms. Therefore, appointment of a successor remains an option because it would not result in an appointed Council majority. Further, because Mayor Pro Tem Escobar is in the second half of his current term, his appointed successor would hold office for the remainder of his term (until November 2020). The seat would then be up for election for a full four-year term as part of the regular election cycle. An appointed Councilmember, once appointed, assumes the same powers and duties of an elected Councilmember for the remainder of his or her term.

Fiscal Impact:

If a special election is called by the City Council, there will be costs to conduct a special election.

Jesus Eduardo Escobar
1005 Holdridge St.
Calexico, CA 92231



January 2, 2019

Mr. Lewis Pacheco, Mayor
City of Calexico
608 Heber Avenue
Calexico, CA 92231

Dear Mayor Pacheco:

Please accept this letter as my notice of resignation as a city councilmember for the City of Calexico effective January 3, 2019.

I have learned a great deal and truly enjoyed serving on this council. We, as a collective group, have made significant strides to improve the City of Calexico overall. Much is still to be done and I, as a new member of the Imperial County Board of Supervisors, will continue to fully support the city's advancement.

I look forward to continuing to work with you, councilmembers, city executives and staff and business and community members in transforming Calexico into a more prosperous and vibrant community.

Respectfully,

A handwritten signature in black ink, appearing to be "J. Escobar" with a long horizontal flourish.

Jesus Eduardo Escobar

Cc:/ David Dale, Calexico City Manager
Miguel Figueroa, Calexico Assistant City Manager