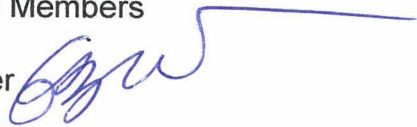




City of
Los Banos
At the Crossroads of California

Agenda Staff Report

TO: Mayor Pro Tem Lambert and City Council Members

FROM: Gregory B. Wellman, Interim City Manager 

DATE: October 5, 2022

TYPE OF REPORT: Agenda Item/Councilmember Request

SUBJECT: Mayor Vacancy

RECOMMENDATION:

1. Provide interested persons an opportunity to present to the City Council their qualifications to fill the vacancy created by the resignation of Mayor Faria.
2. Consider the qualifications and presentations of interested persons.
3. Appoint a qualified person to fill the vacancy by adoption of Resolution ____.

In the alternative:

4. Provide direction to staff on how to proceed.

BACKGROUND:

As a result of the resignation of Mayor Faria effective September 17, 2022 a vacancy has occurred in the office of the elected Mayor. The next General Election is scheduled for Tuesday, November 8, 2022 and the Merced County Elections Officer (Registrar of Voters) has thirty (30) days to certify the results of the election. Upon the Merced County Election Officer's certification, the City Council will then by resolution accept the election results at a regular meeting of the City Council. The foregoing

process would be expected to conclude in December 2022 with the swearing in of a new Mayor. It should be noted that as of the date of this staff report there is only one current candidate running for Mayor in the November 8, 2022 General Election.

On September 21, 2022, Council Member Jones, during councilmember comments, requested an item be placed on the next agenda allowing for the discussion, nomination, and appointment to fill the mayoral vacancy.

Pursuant to Government Code §36512(b), if a vacancy occurs in an elective office, the City Council must, within sixty (60) days from the date of the vacancy, either fill the vacancy by appointment or call a Special Election to fill the vacancy. Since there are only thirty four (34) days until the November 8, 2022 General Election the option to call a Special Election is a non-option.

By Appointment. There are no State laws or Los Banos Municipal Code provisions establishing specific procedures to make an appointment to fill a City Council vacancy. No formal application process is required, and the City Council may appoint any qualified person who is at least eighteen (18) years of age, and a resident of Los Banos and a registered voter. If the City Council opts to fill the vacancy by appointment, the Brown Act requires any interviews, deliberations, or voting concerning the appointment conducted by the City Council to be held in open session. In this case a person either appointed or elected shall hold office for the unexpired term of the former incumbent.

DISCUSSION:

Some jurisdictions have adopted ordinances, resolutions or policies, setting out the procedure for filling a City Council vacancy. The City of Los Banos does not have an established procedure for filling a City Council/Elected Mayor vacancy.

Alternative 1 – Appoint a qualified person to fill the vacancy for the remainder of the term.

If the City Council votes to fill the vacancy by appointment, the appointment must be made within sixty (60) days of the City Council seat becoming vacant. The 60th day from the effective date of Mr. Faria's resignation would be after the November 8, 2022 General Election.

There is no legal requirement that the City Council use any particular method of appointment. It is common in such situations for the City Council to notice the vacancy and invite applications. If the City Council interviews, it must be done at a public meeting, although the meeting can be held at any time. The appointment must be made in public. This is not a permitted Closed Session discussion or decision.

In anticipation of this option and the time constraints (thirty four (34) days until the General Election) staff has posted on the City's website and City's Facebook pages a notice and invitation to interested persons that the City Council would allow

presentations at its October 5, 2022 meeting to present their qualifications to fill the vacancy in the Office of Mayor. A copy of the notice is enclosed with this staff report.

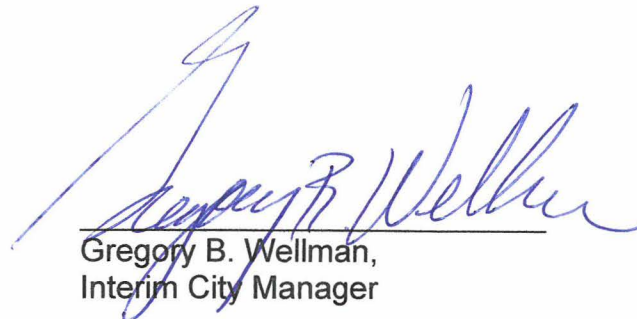
Alternative 2 – Direction to Staff.

Staff will implement any further direction from the City Council.

FISCAL IMPACT:

None.

Reviewed by:



Gregory B. Wellman,
Interim City Manager

Attachments:

Notice

Proposed Resolution

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RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS BANOS FILLING THE VACANCY OF THE OFFICE OF MAYOR BY APPOINTMENT TO SERVE THE UNEXPIRED TERM OF THE INCUMBENT

WHEREAS, pursuant to California Government Code Section 34903 the Mayor is elected at large for a two (2) year term as a member of the City Council and has all of the powers and duties of a member of the City Council; and

WHEREAS, pursuant to California Government Code Section 36802 the Mayor is the presiding officer at the meetings of the City Council; and

WHEREAS, pursuant to California Government Code Section 36512 if a vacancy occurs in the elective office of Mayor the City Council may fill the vacancy by appointment; and

WHEREAS, if the vacancy occurs in the second half of a term of office, the person appointed to fill the vacancy shall hold office for the unexpired term of the former incumbent; and

WHEREAS, a vacancy has occurred in the office of Mayor due to the resignation of Manuel Thomas Faria III effective September 17, 2022; and

WHEREAS, the next General Municipal Election is scheduled for Tuesday, November 8, 2022; and

WHEREAS, the City Council wishes to fill the vacancy in the office of Mayor by appointment, for the unexpired term of the former incumbent.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Los Banos that [NAME] is hereby appointed as Mayor of the Los Banos City Council to serve the unexpired term of the former incumbent.

The foregoing resolution was introduced at a regular meeting of the Los Banos City Council held on the 5th day of October 2022, by Council Member _____ who moved for its adoption, which motion was duly seconded by Council Member _____, and the Resolution was adopted by the following vote:

AYES: Council Members

NOES:

ABSENT:

APPROVED:

Kenneth Lambert, Mayor Pro Tem

ATTEST:

Lucille L. Mallonee, City Clerk



City of
Los Banos
At the Crossroads of California

PUBLIC NOTICE

Subject: VACANCY OF THE OFFICE OF MAYOR

PLEASE TAKE NOTICE that at its Regular Meeting of **October 5, 2022 at 6:00 p.m. at the City Council Chambers** at 520 J Street in Los Banos, the City Council of the City of Los Banos will consider filling the vacancy of the office of Mayor. All persons interested in being considered to fill the vacancy of the office of Mayor are invited to attend and make a five (5) minute statement/presentation to the City Council as to why they should be considered to fill the vacancy for the former Mayor's unexpired term (expected to expire upon certification of November 8, 2022 General Election results).

The City Council may appoint any qualified person who is at least eighteen (18) years of age, a resident of Los Banos, and a registered voter.

Dated: September 30, 2022