

Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date:</b> September 10, 2024	<b>Budgeted Amount:</b> N/A
<b>Department:</b> Admin	<b>Prepared By:</b> Dave McCorquodale

**Subject**

Consideration and possible action on appointment of Wayne Joe to City Council Place 3 to serve the remainder of the term expiring in May 2025.

**Recommendation**

If City Council chooses to appoint the applicant, a motion to appoint (NAME) to Montgomery City Council Place 3 for the unexpired term ending in May 2025.

If City Council chooses to not appoint the applicant, no formal action is required to be taken. Motions to deny or table pending additional information are possible/permitted if City Council chooses to do so.

**Discussion**

Issue:

Mr. Wayne Joe has expressed interest to Casey Olson in appointment to City Council Place 3. Councilman Olson asked for the matter to be placed on the agenda for consideration.

Rules:

Texas Local Government Code Chapters 22 & 141:

Sec. 22.010. FILLING VACANCY ON GOVERNING BODY OR IN OTHER MUNICIPAL OFFICE.

(a) If for any reason a single vacancy exists on the governing body of the municipality, a majority of the remaining members who are present and voting, excluding the mayor, may fill the vacancy by appointment unless an election to fill the vacancy is required by Section 11, Article XI, Texas Constitution. The mayor may vote on the appointment only if there is a tie.

(a-1) A person serving as a member of the governing body is not, because of that service, ineligible to be appointed to fill a vacancy in the office of mayor of the municipality, but the person may not vote on the person's own appointment.

(b) The person appointed to fill the vacancy serves until the next regular municipal election.

(c) In lieu of appointing a person to fill a vacancy on the governing body, a special election may be ordered to elect a person to fill the vacancy.

(d) If two or more vacancies on the governing body exist at the same time, a special election shall be ordered to fill the vacancies.

(d-1) A member of the governing body is ineligible to vote to fill a vacancy on the governing body by special election after resigning from the governing body.

(e) If a vacancy exists in any other municipal office, the mayor or acting mayor shall appoint a person to fill the vacancy, subject to confirmation by the governing body.

Sec. 22.032. QUALIFICATIONS OF MEMBERS OF GOVERNING BODY. (a) To be eligible for the office of mayor of the municipality, a person must be a registered voter and must have resided within the municipal limits for at least the 12 months preceding the election day. For purposes of this subsection, residency in an area while the area was not within the municipal limits is considered as residency within the limits if the area is a part of the municipality on election day.

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Sec. 141.001. ELIGIBILITY REQUIREMENTS FOR PUBLIC OFFICE. (a) To be eligible to be a candidate for, or elected or appointed to, a public elective office in this state, a person must:

- (1) be a United States citizen;
- (2) be 18 years of age or older on the first day of the term to be filled at the election or on the date of appointment, as applicable;
- (3) have not been determined by a final judgment of a court exercising probate jurisdiction to be:
  - (A) totally mentally incapacitated; or
  - (B) partially mentally incapacitated without the right to vote;
- (4) have not been finally convicted of a felony from which the person has not been pardoned or otherwise released from the resulting disabilities;
- (5) have resided continuously in the state for 12 months and in the territory from which the office is elected for six months immediately preceding the following date:
  - (A) for a candidate whose name is to appear on a general primary election ballot, the date of the regular filing deadline for a candidate's application for a place on the ballot;
  - (B) for an independent candidate, the date of the regular filing deadline for a candidate's application for a place on the ballot;
  - (C) for a write-in candidate, the date of the election at which the candidate's name is written in;
  - (D) for a party nominee who is nominated by any method other than by primary election, the date the nomination is made; and
  - (E) for an appointee to an office, the date the appointment is made;
- (6) on the date described by Subdivision (5), be registered to vote in the territory from which the office is elected; and
- (7) satisfy any other eligibility requirements prescribed by law for the office.
  - (a-1) For purposes of satisfying the continuous residency requirement of Subsection (a)(5), a person who claims an intent to return to a residence after a temporary absence may establish that intent only if the person:
    - (1) has made a reasonable and substantive attempt to effectuate that intent; and
    - (2) has a legal right and the practical ability to return to the residence.
  - (a-2) Subsection (a-1) does not apply to a person displaced from the person's residence due to a declared local, state, or national disaster.
  - (a-3) The authority with whom an application for a place on a general primary election ballot is filed under Section 172.022 shall, to the extent permitted by law, use Subsections (a) and (a-1) in determining whether a candidate meets the residency requirements for a public elective office.
  - (b) A statute outside this code supersedes Subsection (a) to the extent of any conflict.
  - (c) Subsection (a) does not apply to an office for which the federal or state constitution or a statute outside this code prescribes exclusive eligibility requirements.
  - (d) Subsection (a)(6) does not apply to a member of the governing body of a district created under Section 52(b)(1) or (2), Article III, or Section 59, Article XVI, Texas Constitution.

Analysis & Conclusion:

Discuss the matter and act as you see fit.

Approved By		
Assistant City Administrator & Planning & Development Director	Dave McCorquodale	Date: 09/05/2024