



DATE: November 4, 2019

TO: Mayor and Members of the City Council

VIA: Jeff Moneda, City Manager

FROM: Priscilla Schaus, Communications Director/City Clerk

SUBJECT: CALLING FOR A RECALL ELECTION AND APPROPRIATING FUNDING FOR COSTS ASSOCIATED WITH THE RECALL ELECTION

RECOMMENDATION

It is recommended that the City Council adopt the attached resolutions:

1. Calling an election to be held on March 3, 2020 to determine whether or not Councilmember Herb Perez shall be recalled and authorizing the City Clerk to execute a service agreement with the County of San Mateo for election services; and
2. Appropriating funding in the amount of \$95,000 from General Fund reserves to the Municipal Elections Account No. 001-0220-414-4251 for costs associated with the recall election.

EXECUTIVE SUMMARY

On October 21, 2019, the City Council adopted City Resolution No. 2019-96 accepting the City Clerk/Election Official's Certificate of Sufficiency of Recall Petition and placed on the City Council's November 4, 2019 agenda a resolution calling a Special Recall Election for March 3, 2020.

Because no election was scheduled for FY 2019-2020, no election funding was approved in the FY 2019-2020. Funding will therefore need to be appropriated to pay for contractual services from the County and other administrative and publishing costs.

BACKGROUND

On June 24, 2019 a Notice of Intention to Circulate Recall Petition was filed with the City Clerk. Councilmember Perez filed an Answer to the Notice of Intention July 1, 2019. On July 11, 2019 the form of the Petition was determined to meet the statutory requirements, thus allowing for the proponents to begin gathering signatures. The Secretary of State's Handbook "Procedures for Recalling State and Local Officials" and Elections Code Section 11221(a)(3) state the number of requisite signatures must be equal in number to not less than the following percent of registered voters in the electoral jurisdiction: twenty percent (20%) if registration is less than 50,000 but at least 10,000. According to the Report of Registration filed with the Secretary of State, Foster City has 16,568 registered voters, and thus 3,314 verified signatures were required in order to place this question on a ballot.

Per Elections Code Section 11220(d), 120 days were provided to collect signatures (i.e., until November 8, 2019). On September 18, 2019, the Petition was filed with the City Clerk's Office in accordance with Elections Code Sections 11220 and 11221(a). The City Clerk completed the prima facie review of signatures and identified 4,389 unverified signatures. On September 18, 2019, the City Clerk provided the Petition to the County Elections Office for examination and verification of signatures.

Pursuant to Elections Code Section 11224, the County Elections Office examined the Petition and, from the records of voter registration, ascertained that the Petition was signed by the requisite number of voters. The County Elections Office submitted results of its examination and verification of signatures to the City Clerk/Elections Official on October 16, 2019.

Per Elections Code 11227, as the signatures on the petition were found to be sufficient, the Certificate of Sufficiency was submitted to the City Council at its October 21, 2019 meeting. At that meeting, the City Council adopted City Resolution No. 2019-96 accepting the Certificate of Sufficiency and scheduled the call for election to occur on November 4, 2019.

ANALYSIS

Under Elections Code 11240, the City Council must within fourteen (14) days of the meeting where it received the certificate of sufficiency (i.e., no later than November 4, 2019) call an election and issue an order stating that an election shall be held to determine whether or not Councilmember Perez shall be recalled. If the City Council does not do so, the county elections official must, within five days, set the date for holding the election.

The next election in San Mateo County is scheduled for March 3, 2020. If the recall is called by the City Council on November 4 or by the County between November 15-19,

the election will be consolidated with the March 2020 election.

The San Mateo County Elections Office estimates the election cost for services rendered by the County for an election consolidated with the March 3, 2020 election to be between approximately \$71,900 and \$86,280.

A service agreement needs to be executed between the City of Foster City and the County of San Mateo for election services rendered. The resolution calling the election also authorizes the City Clerk to enter into the service agreement which puts forth the duties that the City Clerk and San Mateo Assessor/County Clerk-Recorder and Elections Office will perform.

Election Costs

In order to cover the costs associated with elections, the City budgets for regular municipal elections in even-years. No funding has been approved for the cost of an election in FY 2019-2020. In order to have sufficient funds for the recall election, City staff has prepared a resolution for City Council consideration appropriating \$95,000 from General Fund reserves to the Municipal Elections Account No. 001-0220-414-4251 for costs associated with the recall election.

This amount should be sufficient to pay for \$86,280 in contractual services rendered with the County for the recall election. In addition, the County will bill the City for costs of signature verification in an amount estimated at \$2,500. Other associated costs of \$4,000 include the cost of translation and publication of legal notices related to the election and a contingency of \$2,220 for unforeseen costs related to the recall election. Any unused funds will be returned to the General Fund.

Next Steps

After the City Council adopts the resolution calling the election, the nomination period for candidates will begin and the deadline for the nominations is seventy-five (75) days prior to the date of the election, per Elections Code 11381. The nomination period will be from November 12, 2019 to December 19, 2019.

Candidates who qualify for nomination in the Recall Election and submit a Candidate Statement of Qualifications to be published and distributed in the sample ballot will be governed by City Resolution No. 2015-50, which indicates that the word count of the statement cannot exceed 200 words, and that the candidate will cover the cost of publication and related services.

Per Elections Code 11328, the recall election shall be conducted, canvassed, and the results declared in substantially the manner provided by law for a regular election for

the office. If a majority of the votes on a recall proposal are “Yes,” the councilmember is removed and the candidate who receives the highest number of votes is the successor to the unexpired term of the recalled councilmember, per Elections Code 11381(c), 11384, and 11385. If one-half or more of the votes at a recall election are “No,” the councilmember sought to be recalled shall continue in office, per Elections Code 11383.

FISCAL IMPACT

With City Council approval, \$95,000 will be appropriated from General Fund reserves to Municipal Elections Account No. 001-0220-414-4251 for costs associated with the recall election.

Attachments:

- Attachment 1 – Resolution Calling the Election
- Attachment 2 – Resolution Appropriating Funding
- Attachment 3 – City Resolution No. 2015-50
- Attachment 4 – City Resolution No. 2019-96

RESOLUTION NO. 2019-96

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOSTER CITY ACCEPTING THE CERTIFICATE OF SUFFICIENCY OF SIGNATURES ON THE PETITION TO RECALL COUNCILMEMBER HERB PEREZ AND SCHEDULING THE CALL FOR ELECTION TO OCCUR ON NOVEMBER 4, 2019

CITY OF FOSTER CITY

WHEREAS, on June 24, 2019, the City Clerk/Election Official received a copy of the Notice of Intention to Circulate Recall Petition which proposed the recall of Councilmember Herb Perez; and

WHEREAS, on July 1, 2019, Councilmember Perez filed an Answer to the Notice of Intention; and

WHEREAS, on July 11, 2019, the Petition for Recall form was determined to meet the statutory requirements and thus approved for signature gathering; and

WHEREAS, Elections Code 11220 states the number of requisite signatures must be equal in number to not less than the following percent of registered voters in the electoral jurisdiction: twenty percent (20%) if registration is less than 50,000 but at least 10,000; and

WHEREAS, according to the Report of Registration filed with the Secretary of State, Foster City has 16,568 registered voters, and thus 3,314 verified signatures were required for this Petition; and

WHEREAS, on September 18, 2019, the Petition to Recall Councilmember Herb Perez was filed with the City Clerk's Office in accordance with Elections Code 11220, prior to the established deadline of November 8, 2019; and

WHEREAS, after completing the prima facie review of signatures, the City Clerk/Election Officer identified 4,389 unverified signatures, which is greater than the minimum 3,314 required, and provided the petition to the San Mateo Assessor/County Clerk-Recorder and Elections Office for examination and verification of the signatures on September 18, 2019; and

WHEREAS, on October 16, 2019, San Mateo Assessor/County Clerk-Recorder and Elections Office provided information for the Certificate of Sufficiency of the Recall Petition, indicating the following, and attached herein.

- (a) The name of the officer whose recall is sought – Herb Perez

- (b) The title of his or her office – Councilmember of the City of Foster City, County of San Mateo
- (c) The number of signatures required by law – 3,314
- (d) The total number of signatures on the petition – 4,380
- (e) The number of valid signatures on the petition – 3,913
- (f) The number of signatures which were disqualified – 467

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Foster City, California hereby accepts the Certificate of Sufficiency of the Signatures on the Petition to Recall Councilmember Herb Perez and determines that the call for election shall be scheduled for City Council action on November 4, 2019.

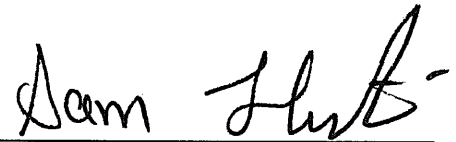
PASSED AND ADOPTED as a resolution of the City Council of the City of Foster City at the regular meeting held on the 21st day of October 21, 2019, by the following vote:

AYES: Councilmembers Awasthi, Gehani, Mahanpour, and Mayor Hindi

NOES: None

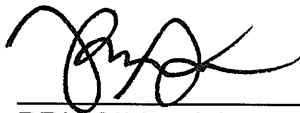
ABSENT: Councilmember Perez

ABSTAIN: None



SAM HINDI, MAYOR

ATTEST:



PRISCILLA SCHAUS, CITY CLERK

CERTIFICATE OF SUFFICIENCY

I, PRISCILLA SCHAUS, City Clerk of the City of Foster City, State of California, hereby certify:

That the "Petition to Recall Councilmember Herb Perez" was filed with my office on September 18, 2019.

That each section contains signatures purporting to be the signatures of qualified electors of this county;

That attached to this petition at the time it was filed was an affidavit purporting to be the affidavit of the person who solicited the signatures, and containing the dates between which the purported qualified electors signed this petition;

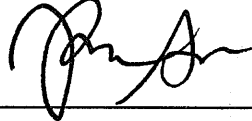
That the affiant stated his or her own qualification that he or she had solicited the signatures upon that section, that all of the signatures were made in his or her presence, and that to the best of his or her knowledge and belief each signature to that section was the genuine signature of the person whose name it purports to be;

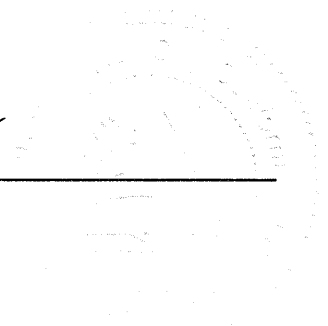
That after the proponent filed this petition I requested the San Mateo County Assessor-County Clerk – Recorder & Elections Office to verify the required number of signatures by examining the records of registration in this county, current and in effect at the respective purported dates of-such of signing, to determine what number of qualified electors signed the petition. The results of the examination by the San Mateo County Assessor-County Clerk – Recorder & Elections Office are as follows:

1. The name of the officer whose recall is sought: Herb Perez
2. The title of his or her office: Councilmember of the City of Foster City, County of San Mateo
3. The number of signatures required by law: 3,314
4. The total number of signatures on the petition: 4,380
5. Number of signatures verified: 4,380
6. The number of valid signatures on the petition: 3,913
7. The number of signatures which were disqualified: 467

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 16th day of October, 2019.

Priscilla Schaus
City Clerk





RESOLUTION NO. 2015-50

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOSTER CITY REPEALING RESOLUTION NO. 97-69 AND ADOPTING NEW REGULATIONS FOR CANDIDATES FOR ELECTIVE OFFICE PERTAINING TO CANDIDATES' STATEMENTS SUBMITTED TO THE VOTERS AT AN ELECTION

CITY OF FOSTER CITY

WHEREAS, §13307 of the Elections Code of the State of California provides that the governing body of any local agency adopt regulations pertaining to materials prepared by any candidate for a municipal election, including the costs of the candidate's statement; and

WHEREAS, the City Council of the City of Foster City has by adoption of City Resolution 97-69, designated The City of Foster City to bear the total cost associated with the printing, handling, translating, and mailing of candidate statements in voter sample ballots.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Foster City does hereby repeal Resolution 97-69 and designates the candidate to bear the total cost associated with the printing, handling, translating, and mailing of candidate statements in voter sample ballots.

BE IT FURTHER RESOLVED, by the City Council of the City of Foster City that each candidate who requests that a Statement of Qualifications be published and distributed with the sample ballot for the Statewide General Election, shall be charged a deposit of \$400.00 to cover the cost of publication of such Statement of Qualifications, including the cost of translation of such statement into Spanish and Chinese, if requested by the candidate. Any unused funds will be refunded back to the candidate. Similarly, any overage of cost will be invoiced to the candidate.

BE IT FURTHER RESOLVED, that such Statement of Qualifications may not exceed two hundred words in length and such statement will be the only material sent with the sample ballots and no other material will be included for distribution.

PASSED AND ADOPTED as a resolution of the City Council of the City of Foster City at the regular meeting held on the 1st day of June, of 2015 by the following vote:

AYES: Councilmembers Bronitsky, Okamoto, Perez, Pollard and Mayor Kiesel

NOES: None

ABSENT: None

ABSTAIN: None



ART KIESEL, MAYOR

ATTEST:



DORIS L. PALMER, CITY CLERK

RESOLUTION NO. 2019-103

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOSTER CITY CALLING AND GIVING NOTICE OF THE HOLDING OF A RECALL ELECTION TO BE HELD ON TUESDAY, MARCH 3, 2020 FOR THE RECALL OF COUNCILMEMBER HERB PEREZ AS REQUIRED BY THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA RELATING TO GENERAL LAW CITIES

CITY OF FOSTER CITY

WHEREAS, on June 24, 2019, the City Clerk received a Notice of Intention to Circulate Recall Petition which proposed the recall Councilmember Herb Perez (the "Petition for Recall"); and

WHEREAS, on July 1, 2019, Councilmember Perez filed an Answer to the Notice of Intention; and

WHEREAS, on July 11, 2019, the Petition for Recall form was determined to meet the statutory requirements and approved for the Proponents to begin gathering signatures; and

WHEREAS, Elections Code Section 11221 states the number of requisite signatures for a recall petition must be equal in number to not less than the following percent of registered voters in the electoral jurisdiction: twenty percent (20%) if registration is less than 50,000 but at least 10,000. According to the Report of Registration filed with the Secretary of State, Foster City has 16,568 registered voters, and thus 3,314 verified signatures are required.

WHEREAS, Elections Code Section 11220 states that 120 days are provided to collect the requisite signatures set forth above, and thus the deadline to submit a recall petition is November 8, 2019; and

WHEREAS, on September 18, 2019, the Petition to Recall Councilmember Herb Perez was filed with the City Clerk's Office in accordance with Elections Code Section 11220, *et seq.*; and

WHEREAS, on October 21, 2019 the City Council adopted City Resolution No. 2019-96, accepting the Certificate as to the Sufficiency of Signatures on the Petition to Recall Councilmember Herb Perez and scheduling the call for election to occur on November 4, 2019; and

WHEREAS, California Elections Code Section 11240 requires that the City Council, within 14 days after the meeting at which it accepts the Certificate of Sufficiency, call for an election to be held to determine whether or not the officer named in the petition shall be recalled; and

WHEREAS, California Elections Code Section 11242 requires that the election be held not less than 88, nor more than 125, days from the order calling for the election; and

WHEREAS, under the provisions of the laws relating to general law cities in the State of California, a Recall Election shall be held on March 3, 2020 to determine whether or not Councilmember Perez shall be recalled; and

WHEREAS, the Recall Election is to be consolidated with the Presidential Primary Election to be held on the same date and the City the precincts, polling places and election officers for the elections be the same, and that the Board of Supervisors of the County of San Mateo canvass the returns of the Recall Election and the election be held in all respects as if there were only one election.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Foster City, California that:

1. That pursuant to the requirements of the laws of the State of California relating to general law cities, there is called and ordered to be held in the City of Foster City on Tuesday, March 3, 2020, a Recall Election to determine whether or not Councilmember Perez shall be recalled from the Office of Councilmember;
2. That the Board of Supervisors is hereby authorized to canvass the returns of the Recall election, and that the Recall Election and the other elections shall be held in all respects as if there were only one election, and only one form of ballot shall be used;
3. That the ballots to be used at the election shall be in the form and content as required by law;
4. The following question in the ballot of the recall election:

Shall Herb Perez be recalled (removed) from the office of Councilmember of the City of Foster City?	YES	
	NO	

5. Voters will decide whether or not to recall the officer and, if there is a candidate, will also choose a successor if the recall is successful. Names of qualified replacement candidates, pursuant to Elections Code Section 11381, should appear on the ballot;
6. That the Board of Supervisors is hereby requested to issue to all officers of the County of San Mateo (the "County") charged with duties pertaining to the other election instructions to take any and all steps necessary for the holding of the consolidated elections. Pursuant to Elections Code

City Resolution No. 2019-103

Section 10002, the Board of Supervisors of the County is requested to permit the Registrar of Voters and County Clerk as County Elections Official to render all services specified by Elections Code Section 10400, *et seq.* relating to the election, for which services the City agrees to reimburse the County;

- 7. That the consolidated election shall be held and conducted, election officers appointed, vote centers designated, ballots printed, polls opened at 7:00 a.m. and closed at 8:00 p.m. on election day, ballots counted and returned, returns canvassed, and all other proceeding in connection with the election shall be regulated and done by the County Clerk of the County in accordance with the provisions of law regulating the elections so consolidated;
- 8. That the City Clerk is hereby authorized to execute a service agreement with the County to render specified services to the City relating to the March 3, 2020 Election;
- 9. That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further additional notice of election, in time, form and manner as required by law; and
- 10. That the City Clerk of the City is hereby directed to file a certified copy of this resolution with the Registrar of Voters of the County as soon as possible and in no event later than 88 days prior to the date set for the elections.

PASSED AND ADOPTED as a resolution of the City Council of the City of Foster City at the regular meeting held on the 4th day of November, 2019, by the following vote:

AYES: Councilmembers Awasthi, Gehani, Mahanpour, and Mayor Hindi

NOES: None

ABSENT: Councilmember Perez

ABSTAIN: None

DocuSigned by:

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 SAM HINDI, MAYOR

ATTEST:

DocuSigned by:

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 PRISCILLA SCHAUS, CITY CLERK

RESOLUTION NO. 2019-104

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOSTER CITY APPROPRIATING \$95,000 FROM GENERAL FUND RESERVES TO MUNICIPAL ELECTIONS ACCOUNT NO. 001-0220-414-4251 FOR COSTS ASSOCIATED WITH THE RECALL ELECTION

CITY OF FOSTER CITY

WHEREAS, on October 21, 2019 the City Council adopted City Resolution No. 2019-96, accepting the Certificate of Sufficiency of Signatures on the Petition to Recall Councilmember Herb Perez and placing on the City Council's November 4, 2019 agenda a resolution calling a Special Recall Election for March 3, 2020; and

WHEREAS, California Elections Code Section 11240 requires that the City Council, within 14 days after the meeting at which it accepts the Certificate of Sufficiency, call for an election to be held to determine whether or not the officer named in the petition shall be recalled; and

WHEREAS, California Elections Code Section 11242 requires that the election be held not less than 88, nor more than 125, days from the call of the election; and

WHEREAS, there are costs associated with holding a recall election to determine whether or not Councilmember Perez shall be recalled; and

WHEREAS, regularly scheduled elections in the City of Foster City occur in November of even-numbered years, thus no funding has been approved for the cost of an election in FY 2019-2020; and

WHEREAS, based on the cost estimates provided by the San Mateo Assessor/County Clerk-Recorder and Elections Office, for an election consolidated with the March 3, 2020 primary election, funding in the amount of \$86,280 will need to be appropriated for contractual services rendered with the County for the recall election; and

WHEREAS, in addition, the City will need to pay the county for services rendered related to signature verification and estimated costs provided were \$2,500. Other associated costs of \$4,000 will include the translation and publication of legal notices related to the election, and a contingency of \$2,220 for unforeseen costs related to the recall election; and

WHEREAS, after the recall election, any unused funds will be returned to the General Fund; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Foster City does hereby approve the appropriation of \$95,000 from General Fund reserves to the Municipal Elections Account No. 001-0220-414-4251 for costs associated with the recall election.

City Resolution No. 2019-104

PASSED AND ADOPTED as a resolution of the City Council of the City of Foster City at the regular meeting held on the 4th day of November, 2019, by the following vote:

AYES: Councilmembers Awasthi, Gehani, Mahanpour, and Mayor Hindi

NOES: None

ABSENT: Councilmember Perez

ABSTAIN: None

DocuSigned by:

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SAM HINDI, MAYOR

ATTEST:

DocuSigned by:

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PRISCILLA SCHAUS, CITY CLERK