



MEMORANDUM
OFFICE OF THE CITY ATTORNEY

9027 Center Street, Suite 102
Manassas, VA 20110
Telephone: (703) 257-8208
Fax: (703) 365-2060

TO: Mayor and City Council
cc: W. Patrick Pate, City Manager

FROM: Craig Brown, City Attorney

DATE: June 11, 2019

RE: Filling a Vacancy on City Council

As you know the Prince William County Board of Supervisors currently has a vacancy on their board. Due to the enabling legislation for jurisdictions with a County Executive form of government, the Board was unable to make an interim appointment, but did petition for a special election to fill the seat. This memorandum provides an outline of the process that is required to fill a vacancy on City Council, should one occur.

The Interim Appointment to Fill a Vacancy

Section 6 of the City Charter states that *[t]he remaining members of council shall fill any vacancy that may occur in the membership of the council in accordance with applicable law.* The starting point of the “applicable law” is Virginia Code §24.2-228, which provides for an interim appointment by City Council, pending a special election:

When a vacancy occurs in a local governing body or an elected school board, the remaining members of the body or board, respectively, within 45 days of the office becoming vacant, may appoint a qualified voter of the election district in which the vacancy occurred to fill the vacancy. If a majority of the remaining members of the body or board cannot agree, or do not act, the judges of the circuit court of the county or city may make the appointment. Notwithstanding any charter provisions to the contrary, the person so appointed shall hold office only until the qualified voters fill the vacancy by special election pursuant to §24.2-682 and the person so elected has qualified. Any person so appointed shall hold office the same as an elected person and shall exercise all powers of the elected office.

The phrase “a qualified voter of the election district in which the vacancy occurred” simply means a qualified voter in the City, since there is only one City-wide “election district”. Note that the statute states that the Council “*may appoint*” someone to temporarily fill the vacancy. The failure

of Council to make an interim appointment would, however, allow the local Circuit Court judges to make the appointment.

While state law empowers City Council to make an interim appointment to fill a vacancy, it does not specify or require any particular process. For example, City Council could advertise the vacancy, accept applications, select and interview finalists, and then make an appointment,¹ but none of those steps are legally required. If a vacancy does occur, Council will need to decide what process, if any, will be used for filling the vacancy.

As noted in the state code section quoted above, the person appointed by City Council on an interim basis shall only hold office “until the qualified voters fill the vacancy by special election”. Once a special election is held and the winner qualifies and is sworn in, the term of the interim appointee ends.

The Special Election

Once a vacancy occurs City Council must, within 15 days of the occurrence of the vacancy, petition the Circuit Court for a writ of election to fill the vacancy for the remainder of the term. Virginia Code §24.2-226 states that the court, upon receiving the petition, “*shall order the special election to be held on the date of the next general election in November . . . However, if the governing body . . . requests in its petition a different date for the election, the court shall order the special election be held on that date, so long as the date requested precedes the date of such next general election and complies with the provisions of §24.2-682.*” Section 24.2-682 states that special elections:

- Must be held on a Tuesday;
- Cannot be held within the 55 days prior to a general or primary election;
- Cannot be held on the same day as a primary election; and,
- May be held on the same day as a general election.

The timing of the special election can also be affected by when the vacancy occurs. The following are also statutory rules that govern the timing of the special election to fill a vacancy on City Council:

- If the vacancy occurs within 90 days of the next general election and the Council has not requested in its petition a different date for the election, the special election will be held on the date of the second such general election. As an example, if the vacancy occurs within 90 days of the November 2019 general election, the special election will be held at the November 2020 general election, unless Council requests an earlier date in 2020.
- A special election to fill a vacancy shall not be ordered or held if the general election at which it is to be called is scheduled within 60 days of the end of the term of the office to be filled. (A special election would not be ordered for November 2020 if the term of the

¹ As an example I have attached an advertisement and one page application that was used by the City of Virginia Beach to fill a vacancy on their City Council.

office being filled ends December 31, 2020. In that case the vacancy would be filled by the regular general election, rather than by a special election).

- When an interim appointment to a vacancy is made by the governing body, no election to fill the vacancy shall be ordered or held if the general election at which it is to be called is scheduled in the year in which the term expires.

Special elections are conducted under the same rules and regulations that apply to general elections. Once the winner of the special election qualifies and is sworn in, he or she then serves the remainder of the term of the office vacated.

Please let me know if you have any questions or if it would be helpful for me to respond to a specific hypothetical -- the rules governing the timing of the special election can be confusing.