

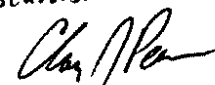
November 5, 2008

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Mayor Landry and City Council
City of Novi
45175 W. Ten Mile Road
Novi, MI 48375

Re: ***Filling Vacancy in Councilmember Position***
Our File No. 55142 NOV

11/6/08
To: Mayor and City
Council Members
For discussion Nov. 10.


Dear Mayor Landry and Councilmembers:

Our office has been asked to prepare a brief memorandum of the process for filling the vacancy created by the election of Mayor Pro Tem Capello to the position of member of the County Board of Commissioners. The process is fairly straightforward.

The term of office for a member of the County Board of Commissioners begins on January 1, 2009. Mayor Pro Tem Capello will be sworn in to that office on or after that date. Before being sworn into that position, he continues in his position as City Council member (i.e., for the November and December meetings). *

The Council is obligated under the City Charter, Section 5.6(c), to fill the vacancy within 30 days after the vacancy occurs. That will be December 31, 2008. The person appointed must possess the qualifications for office of City Council, as set forth in the Charter, Section 3.2, which generally requires that the individual be qualified to hold office under the laws of the state, and be a resident of the City. x

The vacancy is filled by a majority vote of the members of Council remaining in office. If the position is not filled within 30 days after the vacancy occurs, a special election is required. The likely date for a special election is May, 2009. (Notice of a special election must be given by the Clerk 90 days before the election, and the general provisions for filing nominating petitions, etc., apply.)

Historically, it appears that the City has held interviews of candidates to fill the vacancy. For example, when the City Council filled the vacancy for former Councilmembers Crawford and DeRoche, it held interviews for the position in

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December, with appointment of the successor and administration of the oath done in January.

While there is no statutory, charter, or ordinance requirement to do interviews before the appointment, the benefit of doing so is that it provides a clear and open process that meets the requirements of the Open Meetings Act. Other communities have experienced situations where allegations of an OMA violation are made when making a motion to appoint, without debate, which then passes quickly or unanimously.

There is similarly no set process for making the actual appointment. It has been done in Novi by ballot on previous occasions. A nomination and seconding process can also be used. A majority vote of remaining members (four votes, in this case) is required for the appointment.))

Attached is a copy of the two relevant provisions of the Charter.

If you have any questions regarding the above, please do not hesitate to call.

Very truly yours,



Thomas R. Schultz

TRS/jes

Enclosures

cc: Clay Pearson, City Manager
Maryanne Cornelius, City Clerk
Pam Antil, Assistant City Manager

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Novi Charter Provisions

Vacancy in Office

Section 3.11. Vacancies for unexpired terms.

When vacancies for unexpired terms of the elective officers are to be filled by election under provisions of Section 5.6(c) of this Charter, separate provisions shall be made on the ballot for such purpose.

Section 5.6. Filling vacancies.

(a) *Vacancies in Offices Appointed by Council.* Vacancies in offices appointed by the Council shall be filled in the manner provided for the original filling of such offices.

(b) *Vacancy in Office of Mayor.* In the event of the vacancy of the office of the Mayor, the Mayor Pro Tem will serve the remainder of that unexpired term as Acting Mayor, and the Council position made temporarily vacant (by Mayor Pro Tem's filling office of Mayor) shall be filled in accordance with Section 5.6(c). Upon the expiration of the term as Acting Mayor, the Mayor Pro Tem shall resume the office of Councilman, provided that his term has not expired.

(c) *Vacancies in Elective Office.* Vacancies in elective offices other than the Mayor, including the temporary vacancy created by the Mayor Pro Tem's assuming the office of Acting Mayor as provided in Section 5.6(b), shall, within thirty (30) days after such vacancy occurs, be filled for a term expiring on the date of the next regular City election, by appointment of a person possessing the qualifications for the office by a majority vote of the members of the Council then in office.

If any such vacancy in the position of Councilman, including the temporary vacancy created by the Mayor Pro Tem's assuming the office of Acting Mayor, as provided in Section 5.6(b), which the Council is authorized to fill, is not so filled within thirty (30) days or if three (3) or more vacancies exist simultaneously in such position, such vacancy or vacancies shall be filled for the respective unexpired terms at a special election. The temporary vacancy in the Council position created by the Mayor Pro Tem's assuming the office of Acting Mayor shall be filled for a term expiring on the date of the next regular City election. Notice of such special election shall be given by the Clerk ninety (90) days prior to such election, and the election shall be held in manner provided by this Charter. Candidates shall qualify by the filing of nominating petitions or cash payment in accordance with Section 3.18 and shall be certified to the Election Commission and placed on the ballot in manner identical to that provided in Sections 3.17, 3.18, and 3.20 hereof. No primary election shall be held.

Notwithstanding the foregoing, any vacancies which occur one hundred twenty (120) days or less before the next regular City election shall not be filled.