

CITY of NOVI CITY COUNCIL

**Agenda Item 5
October 11, 2010**

SUBJECT: Discussion of Process to fill Potential Council Vacancy.

SUBMITTING DEPARTMENT: City Manager

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION:

There is a potential for a Council seat vacancy based on the results from the Tuesday, November 2, 2010 General Election.

In the past, the City has published a notice in the local paper for interested persons to apply. Following the application period, interviews were conducted for the candidates. While there is no set process for making an appointment, it has been done by ballot and as a nomination and seconding process by the remaining Council Members. In this instance, a majority vote of four is needed for an appointment. If the seat is not filled after 30 days of vacancy, a special election is required. The accompanying material may be a helpful guide for your determination.

If City Council is agreeable a proposed timeline is:

Step 1: Publish a notice in the October 28, 2010 edition of the *Novi News* for interested persons to apply (with a stipulation that the vacancy is contingent on the November election results);

Then, **if** as a result of the election and the subsequent resignation by the Council Member a vacancy is created:

Step 2: Special City Council meeting on Monday, November 15, 2010 for candidate interviews;

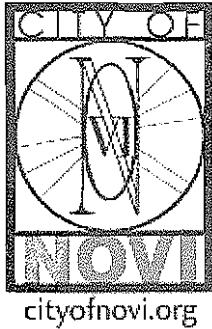
Step 3: Council seat appointment at the November 22, 2010 or December 6, 2010 City Council meeting.

The dates can be adjusted forward depending on whether a resignation occurs following the election, but the three-step process should be confirmed in any event for the establishment of future agenda items.

RECOMMENDED ACTION: Approval of Process to fill Potential Council Vacancy.

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Gatt				
Council Member Crawford				
Council Member Fischer				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Staudt				



TO: MAYOR AND CITY COUNCIL MEMBERS
FROM: CLAY J. PEARSON, CITY MANAGER
SUBJECT: POTENTIAL COUNCIL VACANCY
DATE: OCTOBER 4, 2010

The City Council **may** have a vacancy occurring that would be effective the first of the year. The purpose of this memorandum is to provide background for the City Council to entertain a process for selecting a person **if** a vacancy occurs.

Requirements and Process for Filling a Vacancy

The term of office for a member of the County Board of Commissioners begins on January 1, 2011. Members elected will be sworn into that office on or after that date. *Before* being sworn into that position, any person holding another office continues in the position as City Council member (i.e., for the November and December meetings).

The Council is obligated under the City Charter, Chapter 3 Nominations and Elections, Section 3.11 Vacancies for Unexpired Terms which references Section 5.6(c) Filling Vacancies under Chapter 5 General Provisions Regarding Officers and Personnel of the City, to fill the vacancy within 30 days after the vacancy occurs. The person appointed must possess the qualifications for office of City Council, as set forth in the Charter, Section 3.2 Qualifications of Electors, which generally requires that the individual be qualified to hold office under the laws of the state, and be a resident of the City. 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. (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, the City has held interviews of candidates to fill the vacancy. For instance, there were interviews held on December 15, 2008 in which applicants were interviewed for the vacant seat. The member who's space is being vacated would presumably not participate in the special meeting for interviews. A newspaper public notice was published two weeks prior for interested persons to apply, etc. In that particular case, the City Council voted at the January 5, 2009 meeting for a replacement.

While there is no statutory, charter, or ordinance requirement to do interviews before the appointment, the benefit of doing so is one way to provide a clear and open process that meets the requirements of the Open Meetings Act. There is similarly no set process for making the actual appointment. It has been done in Novi by ballot (that is an open public record) 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.

Schedule considerations and options

The City Council's early budget input and goal setting along with the 2011 City Council meeting schedule was set at your August 23, 2010 meeting. We are planning on presenting the property tax base primer and the results of the 2010 National Citizen Survey on December 6, 2010. *It would be beneficial and an advantage for anybody selected to fill a vacancy to know their status by December 2010.* In addition to being able to participate in goal setting in early January, that would also provide at least some opportunity for an individual to meet with staff, review documents and plans, and become more familiar with the upcoming responsibilities. Naturally, it is completely up to any individual on Council if they are entertaining a resignation to create the vacancy that would need to be filled in December 2010.

If the City Council is agreeable, a notice could be circulated for interested individuals and published in the *Novi News* on Thursday, October 28. The notice would obviously have a qualifier saying that this process is a contingency in the event that there is a vacancy to be filled. Interviews could then be scheduled for a special City Council meeting on November 15 with an appointment on either November 22 or December 6.

Section 3.10. Nonpartisan primary election; when held.

Primary elections for the nomination of candidates for elective office under the provisions of this Charter shall be held on the first Tuesday following the first Monday in August of each odd-numbered year.

Editor's note—See Code of Ordinances § 13-2 for designation of primary date as Tuesday following the second Monday in September of each odd-numbered year.

State law reference—Odd-year primary election, MCL 168.644b, MSA 6.1644(2).



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 3.12. Notice of election.

Notice of the time and place of holding any City election, the officers to be elected and the matters to be voted upon shall be given by the Clerk by posting such notice in not less than three (3) public places in the City two (2) weeks prior to such election and by publishing such notice at least two (2) times; the first publication to be made not less than ten (10) days prior to such election in a newspaper circulated in the City.

State law reference—Notice of election, MCL 168.653a, MSA 6.1653(1).

Section 3.13. Form of ballot.

The form, printing and numbering of ballots in all elections shall conform to that prescribed by statute, except that no party designations or emblem shall appear on ballots for elections of City elective offices. The names of candidates shall rotate in [the] manner prescribed by statute.

If two (2) or more candidates or nominees for the same office have the same or similar surnames, the Election Commission shall print the residence address under the respective names of such candidates or nominees on the ballots (or on labels or slips to be placed on voting machines, when used). Except as provided in this Section, there shall be

no supplemental identification of candidates on the ballot.

State law reference—Arrangement of ballot, MCL 168.706, MSA 6.1706.

Section 3.14. Voting machines.

Ballots may be cast by the use of voting machines and, if used, shall conform to all of the provisions of the statutes in such case made and provided.

State law references—Voting machines at primaries, MCL 168.584 et seq., MSA 6.1584 et seq.; voting machines generally, MCL 168.770 et seq., MSA 6.1770 et seq.

Section 3.15. Voting hours.

The polls of all elections shall be opened and closed at the time prescribed by statutes for State elections.

State law reference—Opening and closing of polls, MCL 168.720, MSA 6.1720.

Section 3.16. Supplies and equipment.

The Council shall provide all necessary voting booths, voting machines, equipment, ballot boxes and supplies for the conducting of all elections and primaries.

State law reference—Polling places, equipment and supplies, MCL 168.662, MSA 6.1662.

Section 3.17. Nomination to office.

Candidates for any elective office, to be voted for at any municipal election held under the provisions of this Charter, except as provided in Section 5.6(c), shall be nominated at a primary election, and no other name shall be placed upon the election ballot for the election of such officers except those nominated in the manner hereinafter prescribed. However, whenever the number of candidates for nomination to any office does not exceed three (3) times the number to be elected to that office, then in such case, no primary election for the nomination of candidates for such office shall be held, and such candidates shall be deemed to be nominated to such office. The names of such candidates for any such office shall be placed upon the election ballot to be voted for at the next regular municipal election, in all respects as though

his failure to do so may be deemed cause for his removal. A majority vote of the members of the Council in office at the time, exclusive of any member whose removal is being considered, shall be required for any such removal.

State law reference—Removal of officers by governor, MCL 169.327, MSA 6.1327.

Section 5.5. Resignations.

Resignations of elected and Council-appointed officers shall be made in writing and filed with the Clerk and shall be acted upon by the Council at its next regular meeting, or special meeting called for that purpose, following receipt thereof by the Clerk.



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.

Section 5.7. No change in term of office or compensation.

Except by procedures provided in this Charter, the terms of Mayor, Councilmen and members of boards or commissions appointed for a definite term shall not be shortened or extended beyond the period for which the officer was elected or appointed; except that such officer shall continue to hold office until his successor is elected or appointed and has qualified. The salary of any elective officer shall not be changed from the day he is elected until the end of the term of office for which he was elected.

State law reference—Term of officer not to be shortened or extended, MCL 117.5(d), MSA 5.2084(d).

Section 5.8. Compensation of employees and officers.

The compensation of all employees and officers of the City whose compensation is not provided for herein shall be fixed by the Council within the limits of Council appropriations.

The respective salaries and compensation of officers and employees, as fixed pursuant to this Charter, shall be in full for all official services of such officers or employees and shall be in lieu of

CHAPTER 3. NOMINATIONS AND ELECTIONS*

Section 3.1. Election districts; voting precincts.

The City shall constitute one election district and such voting precincts as the Election Commission may establish. The Council shall fix the location of the polling places.

State law references—Mandatory that Charter provide for one or more wards, MCL 117.3(e), MSA 5.2073(e); election precincts, MCL 168.654 et seq., MSA 6.1654 et seq.

Section 3.2. Qualifications of electors.

The residents of the City having the qualifications of electors in the State of Michigan and registered with the City shall be electors of the City.

State law reference—Qualifications for registration as elector, MCL 168.492, MSA 6.1492.

Section 3.3. Election procedures.

The election of all City officers shall be on a nonpartisan basis. Otherwise, general election laws shall apply to and control all procedures relating to registration and elections unless otherwise provided herein.

State law references—Mandatory that Charter provide for registration of electors, MCL 117.3(c), MSA 5.2073(c); registration of electors generally, MCL 168.491 et seq., MSA 6.1491 et seq.

Section 3.4. Election Commission.

The Election Commission shall consist of the City Clerk and two (2) members appointed by the Council. Such Commission shall have the duties and powers conferred on city election commissioners by statute. The City Clerk shall act as Chairman of the Commission.

Section 3.5. Election Inspectors.

The Election Commission shall, before each election, appoint for each precinct of the City a Board of Inspectors of each election, consisting of not

**State law references*—Michigan election laws, MCL 168.1 et seq., MSA 6.1001 et seq.; mandatory that Charter provide for the time, manner and means of holding elections, MCL 117.3(c), MSA 5.2073(c).

less than three (3) qualified electors, and shall fix their compensation.

Section 3.6. Board of Canvassers.

The Board of Canvassers shall consist of four (4) members who shall possess the powers and duties as prescribed by statute and shall canvass all elections; except that if any such persons are candidates for office or nomination at the election to be canvassed, such persons shall not serve as Canvassers of such election. Members of the Board shall possess the qualifications required by statute, and their selection shall be made in accordance with the statute in such case made and provided. A quorum thereof shall be constituted as prescribed by statute.

State law reference—Board of canvassers, MCL 168.30a, MSA 6.1030(1).

Section 3.7. Election officials.

When any City election or primary is held on the same day as a State or County election or primary, the same election officials shall act in both the City and State or County election or primary.

Section 3.8. Regular city elections; when held.

A regular City election shall be held on the first Tuesday following the first Monday in November of each odd-numbered year. All other regular general elections shall be held on the dates and in the manner provided by the election laws of the State of Michigan.

State law reference—Odd-year general election, MCL 168.644a et seq., MSA 6.1644(1) et seq.

Section 3.9. Special elections.

Special elections shall be held when called by resolution of the Council at least sixty (60) days in advance of such election or when required by this Charter or the statutes of the State of Michigan. Any resolution calling a special election shall set forth the purpose of such election. Special elections shall be conducted in conformity with the provisions of the election laws of the State of Michigan, except as otherwise provided in this Charter.

State law reference—Special election approval, MCL 168.631, 168.639; MSA 6.1631, 6.1639.