

Mayor and Council –

Please see a note from Tom regarding when the next new City Council can be seated regarding when the County will certify the election. Per Tom's advice, the next Council meeting will occur on November 20th not the 13th

- Victor

From: Tom Schultz <tschultz@rsjalaw.com>

Sent: Thursday, October 26, 2023 2:01 PM

To: Cardenas, Victor, Hanson, Cortney

Subject: Post election meeting dates **ATTORNEY-CLIENT PRIVILEGE/CONFIDENTIAL COMMUNICATION**

Victor/Cortney—

As you know (as we've been discussing for the last few days), **the new election law requirements are wreaking havoc with the timing of certifying elections** and, as a result, the holding of initial city council meetings with the newly-elected/newly-constituted councils. Your charter's three relevant provisions are:

4.3 – Term of Office. Each member of the council shall be elected to serve a term of four (4) years, with three (3) council members being elected every two (2) years. The mayor shall be elected for a term of two (2) years * * *

5.7. No change in term of office.

Except by procedures provided in this Charter, the terms of Mayor, Councilperson, 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 the officer's successor is elected or appointed and has qualified.

6.1 – Regular Meetings. The council shall provide by resolution for the time and place of its regular meetings and shall hold at least two (2) such meetings each month. **A regular meeting shall be held on the Monday following each regular city election.** * * *

An election isn't over until it is certified. So, looking at the language of Section 3.5, Section 5.7, and Section 6.1 together, the "Monday following each regular city election" is probably best interpreted to mean the first Monday following **certification** of the election. And, as explained below, we think that the Charter is mandating you to hold a meeting **of the "new" Council** that first Monday following certification of the election.

With past elections, there has never been an issue with holding the first or "organizational" meeting of the "new" Council on the Monday following the election held on the first Tuesday in November. The County Board of Canvassers has never (or at least not in anyone's recent memory) failed to certify an election at which Council elections were being held by that following Monday, and the initial/organizational meeting of the "new" Council has always gone forward without a hitch on the Monday following a local election.

This year, however, with the change in the election laws, **an additional 6 days for military and overseas ballots to be received has been tacked onto the time for receiving ballots.** This

additional time **will** affect the certification of the local elections—which **will** in turn affect when you're able to a meeting on the first Monday following a regular election day.

For this year, the “election day” will be held on November 7th. In years past, the voting would have been “over” that night and the election certified shortly thereafter. You probably could have held a meeting on November 13th, which is when you scheduled your first meeting of the new Council back a year or so ago.

However, with the additional 6 days of military/overseas voting this year, the voting isn't “over” until end of day Monday, November 13th. That means that the election will **not** be certified in time for a meeting that night. **In fact, it very well might push the certification past November 20th**, which would be the following Monday. The County has 14 days from election day to certify the election—or until end of day November 21st. We are now hearing from Joe Rozell, the Director of Elections at Oakland County, that there are a number of issues that will face the Board of Canvassers of Oakland County this year that are new under the new election law, and that will likely add time to the usual certification process.

Based upon the foregoing, our advice is:

1. You should **not seek to hold a meeting of the “new” Council on the 13th**, because the County will clearly not have certified the election by then, and the new members could not be seated. Which begs the question, I guess, could you hold a meeting with “old” Council on November 13th (or on some other date before the certification of the election)? I think the answer is you **probably** could, because of the language in Section 5.7 that members hold their office until their successor is qualified. But I don't recommend it unless you have a really pressing matter. As far as I know, the “old” Council has never met after an election in Novi and taken any substantive actions. We are in uncharted territory here, and caution seems the best approach.
2. **You could re-schedule to November 20, 2023—the first Monday by which the election might be certified.** It sounds like there is a reasonable chance the certification could be done by then. I am unaware of any pressing business that must be on an agenda by the 20th, but you do have a requirement in your charter to hold 2 meetings a month, and you have another scheduled for November 27th.
3. **But you should be prepared to cancel even the meeting on November 20th, too, in the event the County has not certified the election by then. You will be good to meet by November 27th, at the latest.**

I understand that this is an incredibly frustrating exercise to go through, but the fault lies not with the local government, but with the changes to the election law and in particular the dates for receiving the military and overseas ballots and the new difficulties facing the County in its certification process. Obviously, **your community is not alone in having to address this**—but many communities have varying charter provisions addressing when the terms of elected

officials begin and end, and when organizational meetings are held after elections. This advice is based upon the language of your charter in particular.

I look forward to any questions you might have.



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