

MEMORANDUM

TO: St. Francis City Councilmembers
Kate Thunstrom City Administrator
Jenni Wida, City Clerk

FROM: David Schaps, City Attorney's Office

RE: Council Vacancy – Office of Councilmember

DATED: June 13, 2024

At the last council meeting on June 4th, Council member Bauer announced his upcoming resignation from the City Council. He followed up with correspondence to the City that his resignation would be effective on the date of June 17, 2024.

This memorandum is intended to provide the Council with information regarding the basic laws and requirements to fill the recent City Council vacancy. Since both state law and the City Charter regulate how vacancies are filled by the City Council, I have listed the particular sections that pertain to addressing this issue.

Process Issues

Per the City of St. Francis Charter:

Section 2.05 Vacancies In Office. A vacancy in office on the Council shall be deemed to exist in the case of ... resignation... In such case the Council shall by resolution declare the vacancy to exist shall post and publish notice of vacancy and after thirty (30) days, appoint an eligible person to fill the vacancy until the next Municipal election. (Emphasis added). ...

The City has started the publication process required by Charter.

Per State Law:

The primary law in this area is Minn. Stat. 412.02 Subd. 2a:

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Subd. 2a. Vacancy.

Except as otherwise provided in subdivision 2b, a vacancy in an office shall be filled by council appointment until an election is held as provided in this subdivision. In case of a tie vote in the council, the mayor shall make the appointment. ... (Emphasis added).

The appointment will be for the unexpired term until a newly elected Councilmember is sworn in January.

Please note that language at the beginning of the above subdivision is mandatory and not permissive. This means that the City Council must appoint after the 30-day period as required in the City Charter is met. This directive was made to ensure that the City Council maintains full membership as quickly as possible so it may effectively act on the business of the City. It also means that the date at which the City Council must approve a new appointment to the City Council should ideally be set by a special meeting of the City Council after the 30-day period has passed, which would be after July 17, 2024. If the City Council prefers not to hold a special meeting, it should at the latest fill the position at its regular City Council meeting scheduled for Monday August 5, 2024 (Please note there are five Mondays in July).

Applicant Eligibility Requirements

The minimum criteria that the City Council must use in making an appointment to the City Council are:

- A qualified voter in the state of Minnesota.
- A U.S. citizen.
- At least 21 years of age on the date he or she would take office.
- A resident of the city for 30 days before the election.

See Minnesota State Constitution, Article VI.

State law also provides an additional limitation on who they may appoint to the vacancy. The members of the City Council do not have the power to appoint a current member of the Council to the vacancy per state statute, as listed below:

471.46 VACANCIES; PERSONS INELIGIBLE TO APPOINTMENT.

No county, city, town, or school district officer shall be appointed to fill a vacancy in any elective office if the officer has the power, either alone or as a member of a board, to make the appointment; and the ineligibility shall not be affected by resignation before such appointment is made. This section shall not prevent the appointment of a member of a city council to the office of mayor or clerk, but in that case the member shall not vote in the appointment.

Therefore, per this law, the City Council cannot appoint a current Councilmember to the vacant Council seat.

In summary, the Council must choose a person that meets the relevant criteria as listed above but is not a current Councilmember.

Next Steps

Upon passing the attached Resolution, the City is publishing the vacancy as required by law. It can then begin seeking interested candidates.

In terms of process, our office recommends that the City Council start to think about how they would like to move forward with the process to meet with interested members of the community that have submitted an application for the vacant seat. As stated in previous memorandums to the City Council regarding vacancies, it has been the practice in the past for the City Council to conduct interviews and then make a decision on who to appoint at an open special or regular meeting of the City Council.

Direction is sought on how the council would like to proceed.

Please do not hesitate to contact me if you have any questions.