



MEMORANDUM

TO: **Council Members and City Manager**

FROM: **John M. Bruce**

SUBJECT: **Procedure for Filling a Vacancy on City Council**

DATE: **March 3, 2023**

The procedure to be used in filling a vacancy in the City Council is set forth in Wis. Stat. Sec. 17.23(1)(am). That statute states in pertinent part that the Council may fill a vacancy "by majority vote, appointing a successor to serve for the residue of the unexpired term or until a special election is held, as ordered by the common council under s. 8.50, or an office may remain vacant until an election is held."

These, then, are the options available to proceed to fill a vacancy in the Council:

- (1) The Council may by its own act fill the vacancy with the person selected by the Council to serve either for the remainder of the term or until a special election is held; (2) The Council orders a special election; or
- (3) The position may remain vacant until the end of the term and the regular election then fills the vacancy.

As the statute indicates, the Council may fill a vacancy by a majority vote of its members. There is no procedure in the law by which potential candidates for consideration by the Council are selected. The vote by which a vacancy is filled cannot be by secret ballot, as the law allows for the use of secret ballots only in the case of selection of officers of a council. The vote must take place in open session as there is no exemption available for filling a vacancy in the Open Meetings Law.

If the Council elects to hold a special election, the procedure for doing so is set forth in Sec. 8.50 of the statutes. According to Sec. 8.50: "No special election may be held after February 1 preceding the spring election unless it is held on the same day as the spring election, nor after August 1 preceding the general election unless it is held on the same day as the general election, until the day after that election."

The Council would order the special election to be held. The order is to be filed with the city clerk. According to Sec. 8.50(2)(a): "The date for the special election shall be not less than 62 nor more than 77 days from the date of the order except when the special election is held to fill a vacancy in a national office or the special election is held on the day of the general election or spring election. If a special election is held concurrently with the spring election, the special election may be ordered not earlier than 92 days prior to the spring primary and not later than 49 days prior to that primary. If a special election is held concurrently with the general election or a special election is held to fill a national office, the special election may be ordered not earlier than 122 days prior to the partisan primary or special primary, respectively, and not later than 92 days prior to that primary."

Other details are set forth in the statute.

Let me know if there are any questions.

