



MEMORANDUM

TO: Mayor and Council

FROM: Patrick W. Baker, City Attorney

DATE: January 15, 2021

RE: Filling Councilmember Vacancy

As a result of the vacancy created by At-Large Councilmember James Mitchell's resignation effective on January 11, 2021, and ahead of further action by City Council, I've outlined the following as you consider a Council-adopted procedural option for filling by appointment the vacant council seat.

Basis of Authority and Process

State law, specifically N.C.Gen.Stat. §160A-63 (Vacancies) requires that a vacancy on Council "shall be filled by appointment of the city council" and that the person appointed to fill the vacancy "shall be a member of the same political party as a person whom he replaces." Note that neither the City's Charter nor Code of Ordinances prescribes a separate process for filling Council vacancies, so the legal authority is statutorily-based and the procedural process is Council-adopted from Council's (former) Governance and Accountability Committee recommendation. While there is no set process for appointing a candidate, in filling your last two vacancies in 2017, Council appointed the candidates through a nomination and ballot process. Under this option, Councilmembers would nominate candidates. At the close of nominations, Council would vote on each candidate. If no individual candidate receives at least six votes on the first ballot, there would be a run-off between the top two vote getters. If there's a tie that prevents the identification of the top two vote-getters (*e.g.*, 4-3-3, or 3-3-3-1), Council would need to hold run-off votes to select two finalists. If the vote is 5-5, the Mayor could but is not required to break the tie.

Recommendation

Unless there was dissatisfaction with any of your past processes or there is a strong desire to consider a different process, I would recommend proceeding again with this option, nomination and ballot. Another option may work fine if there is a candidate who can quickly secure six or more votes, however, the nomination and ballot option appears less cumbersome as it avoids the need to keep track of motions and substitute motions.

cc: Marcus Jones, City Manager
Stephanie Kelly, City Clerk