



## Office of the City Attorney

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### Memorandum

To: Common Council  
From: Brian Running  
Re: Filling a Council Vacancy

#### **Filling Council Vacancies**

Because of Alicia Halvensleben's election win, we have a vacancy in the Council. Vacancies in the Common Council are addressed in any of three ways.<sup>1</sup>

- The Common Council can appoint a successor by simple majority vote to fill the remainder of the term.
- A special election can be held to fill the seat, with the Common Council appointing a temporary successor until the special election.
- The seat can be left vacant until the next regular election.

The choice will generally be dictated by the length of the remaining unexpired term. Leaving a seat vacant is only appropriate when the remainder of the term is very short. The longer the remaining term, the greater the necessity to fill the vacancy right away. Districts should not go without representation.

In a representative democracy, the primary way for constituents to participate in the democratic process is by voting for their representatives. Therefore, there is a preference for vacancies to be filled by election rather than appointment by the Council. However, if the length of the remaining term is short enough that the time, effort, and expense of a special election is not justified, an appointment provides representation for the district quickly.

In this case, the vacant seat's term expires roughly two years from now, in April of 2028, so roughly two-thirds of the term remains.

#### **Special Elections**

If the Council chooses to go with a special election to fill the vacancy, there are a couple of options. A special election can be stand-alone or in conjunction with a spring or general election.<sup>2</sup> The choice can depend on the willingness to undertake an extra election versus simply merging into an already-scheduled election, and also whether the timeline of events leading up to the election can be accommodated. The Common Council makes this determination and issues the order for a special election.<sup>3</sup>

There are different timelines for stand-alone special elections and special elections in conjunction with general elections, set by state law.

#### **Stand-Alone Special Election**

If a stand-alone special election is chosen, the latest date it could occur this year would be August 1.<sup>4</sup> Elections are always held on Tuesdays, and the last Tuesday before August 1 is July 28. The order for a special election must be given between 62 and 77 days before the election.<sup>5</sup> For a July 28 election, that

means the order would have to be issued between May 12 and May 27. The only Council meeting within that window is May 19.

Candidates can begin circulating nomination papers on the day the order for the special election is filed and must be completed no later than June 1.<sup>6</sup> If more than two candidates file and a primary is required, the primary must be held 4 weeks before the date of the special election, which is June 30.<sup>7</sup> That would leave a fairly short window in which to print ballots and publish notices of the primary, although it would not be impossible to do.

### **Special Election Concurrent with General Election**

If the special election is held concurrently with the November 3 general election, the order for the special election must be given between 92 and 122 days before the partisan primary on August 11, i.e, between April 11 and May 11.<sup>8</sup> There are two Council meetings within that window, on April 21 and May 5. Nomination papers can begin to be circulated starting the day the order for the special election is filed and must be completed by June 1.<sup>9</sup> If a primary is required, it would be held concurrently with the partisan primary on August 11.<sup>10</sup>

If the election is held concurrently, there would not be a need to print special ballots, the candidates would appear on the same ballots as the rest of the candidates in the election.

### **Interim Appointment**

If a special election concurrent with the November 3 general election is chosen, the position would remain vacant for roughly five months and leave District 11 with no representation in the interim, which is undesirable. The Council can make an interim appointment to represent the district until the special election by a simple majority vote.<sup>11</sup>

### **Recommendation**

The Common Council should choose one of the three options for filling the vacancy at the April 21 meeting. Leaving the seat vacant for the remainder of the term is not advisable, so the realistic choices are among a Council appointment for the remainder of the term, a stand-alone special election, or a special election in conjunction with the November 3 general election.

If a Council appointment for the remainder of the term is not chosen, then a decision should also be made whether to make an interim appointment pending a special election. If the Council decides to do so, then applications and resumes should be solicited and an appointment could be made at the May 5 meeting.

Please let me know if you have any questions about this. Remember not to discuss this among yourselves outside of an official meeting.

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<sup>1</sup> Wis. Stat. §17.23(1)(am)

<sup>2</sup> Wis. Stat. §8.50(intro)

<sup>3</sup> Wis. Stat. §8.50(1)(a)

<sup>4</sup> Wis. Stat. §8.50(intro)

<sup>5</sup> Wis. Stat. §8.50(2)(a)

<sup>6</sup> Wis. Stat. §8.50(3)(a) and §8.15(1)

<sup>7</sup> Wis. Stat. §8.50(2)(b)

<sup>8</sup> Wis. Stat. §8.50(2)(a)

<sup>9</sup> Wis. Stat. §8.50(3)(a) and §8.15(1)

<sup>10</sup> Wis. Stat. §8.50(2)(b)

<sup>11</sup> Wis. Stat. §17.23(1)(am)